169-180

No. 1118

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1883.

A. B. MEEKER *et al.*
vs.
THE WINTHROP IRON CO. *et al.*
} Appeal from Circuit Court West'n Dist. Mich.

STIPULATION.

It is hereby stipulated (1) that further proceedings under the rule for alternative mandamus passed at the last Term be waived and dispensed with; (2) and that the right of the defendants to an appeal may be determined upon the hearing of the motion made by complainants to dismiss the appeal and vacate the supersedeas allowed and granted by Mr. Justice Matthews; (3) and that the accompanying copy of the bill, answer and decree furnished by counsel herein (and also the copy of opinion of Judge Baxter accompanying the complainants' brief on motion to dismiss) stand, for the purposes of such hearing, in lieu of reprint of Transcript of Record by the clerk.

FREDERIC ULLMANN,
For Complainants.

R. D. MUSSEY,
For Defendants.

its said mine for the period of five years from December 1st, A. D. 1877, that is to say, until the first day of December A. D. 1882, at a rental of (50) cents per ton of 2240 pounds of ore taken from said mine during the said term by the said lessees. That said lease was duly recorded in the office of the register of deeds of said county on the 23d of August, A. D. 1877, in liber 2 of miscellaneons records, page 458.

And your orators attach to this bill a certified copy of the record of said lease, marked "Exhibit B."

V. And your orators further show that very shortly thereafter, to wit, on the 9th day of August, A. D. 1877, the said St. Clair brothers, together with one H. J. Colwell and Harriet T. Colwell organized a corporation under the laws of the State of Michigan called the Winthrop Hematite Company, for the purpose of mining, refining, smelting and manufacturing iron ores and iron, and duly filed articles of association, as required by law, a copy whereof duly certified by the clerk of the county of Marquette is attached to this bill, marked "Exhibit C."

VI. And your orators show that all the stock of the Winthrop Hematite Company, except a portion thereof taken by the said Coldwells, was taken by the said St. Clair Brothers, and that shortly afterwards they bought out all the interest of the said Coldwells in said company and have ever since owned, and as your orators are informed and believe, still own all the stock of the said Hematite Company.

VII. That the said Winthrop Hematite Company was organized for the purpose of operating said Winthrop mine under the lease so as aforesaid executed by the said Winthrop Iron Company to the said St. Clair Brothers, and in pursuance thereof the said St. Clair Brothers, on the 22d day of August, A. D. 1877, by an instrument under their hands, assigned and set over the said lease to the said Winthrop Hematite Company, and the said assignment was recorded in the office of the register of deeds of the said county of Marquette, on August 23d, A. D. 1877, in liber 2 of mis-

cellaneous records, page 460; and your orators attach to this, their bill, as "Exhibit D," a certified copy of the said assignment.

VIII. That afterwards, to wit, on the 30th day of August, A. D. 1877, the said Winthrop Hematite Company assigned the said lease to the defendants, John N. Glidden and Dan. P. Eells, co-partners, of Cleveland, Ohio, and which said assignment was also recorded in the same office in liber 2 of miscellaneous records, page 619. And your orators attach to this bill a certified copy of the record thereof, marked "Exhibit E."

And your orators charge that the said assignment so made by the said Hematite Company to said Glidden and Eells was merely made as collateral security to secure a debt due or to become due from said St. Clair Brothers or said Hematite Company to the said Glidden and Eells, so that the said Hematite Company is still the beneficial owner of the said lease.

IX. And your orators further show that the said Winthrop Hematite Company has ever since its organization operated and worked the said Winthrop mine under said lease and has taken out large quantities of ore therefrom, and has paid to the said Winthrop Iron Company large royalties, so that up to a late period the stock of the said Winthrop Iron Company was a valuable stock and an income paying stock, and the amount of the royalties paid by the said Hematite Company was divided among the stockholders of the said Iron company annually or semi-annually at regular intervals.

That at the time of the payment of royalties under said lease for the six months ending July 15th, A. D. 1881, no dividend was declared, but the amount of money in the treasury of the said company was reserved until the receipt of the royalties for the ensuing six months by said company; and your orators charge that if a fair and reasonable amount of ore shall be mined by the said Hematite Company for the said year 1881, there should be in the treasury of the said

BILL.

IN EQUITY.

To the JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN. NORTHERN DIVISION:

Arthur B. Meeker and William L. Brown, of the city of Chicago, county of Cook and State of Illinois, and citizens of the State of Illinois, and T. B. Brooks of Newberg, county of Orange and State of New York, and a citizen of the State of New York, bring this, their bill, against the Winthrop Iron Company, a corporation organized and existing under the laws of the State of Michigan, and a citizen of the State of Michigan, the Winthrop Hematite Company, a corporation organized and existing under the laws of the State of Michigan, and a citizen of the State of Michigan, James O. St. Clair, Eugene G. St. Clair, George A. St. Clair, and Julius N. St. Clair of Ishpeming in the State of Michigan, and citizens of the State of Michigan, and residents of the Western District of Michigan, and John N. Glidden and Dan. P. Eells, of Cleveland, in the State of Ohio, and citizens of the State of Ohio.

I. And thereupon your orators complain and say, that the said Winthrop Iron Company is a corporation existing under the laws of the State of Michigan, owning a valuable mine situated in the county of Marquette in said State of Michigan, and has been such corporation since the year 1871, organized for the purpose of carrying on the business of iron mining or producing iron, copper or other ores or minerals in the upper peninsula of Michigan, the reducing the same to metal, the selling, disposing of and dealing in the said ores or metals in such markets or places in or out of said State of Michigan as might be deemed proper and

advantageous to the interests of said corporation; that its capital stock is the sum of five hundred thousand dollars ($500,000), divided into twenty thousand shares (20,000) of twenty-five ($25) each. And your orators attach to this, their bill, as "Exhibit A," a certified copy of the articles of association of said Winthrop Iron Company, duly certified by the clerk of the county of Marquette in the State of Michigan.

II. That on the first day of October A. D. 1881, and for a long time prior thereto the estate of one A. D. Reed owned nine thousand nine hundred and ninety-nine (9999) shares of the capital stock of said company, but the same was held in the names of Mary P. Reed, Mrs. Mary Bell Carpenter, Mrs. A. D. Reed and Mrs. A. D. Reed, trustee.

III. That one A. C. Reed held two hundred and one (201) shares thereof; one Harriet Colwell eight hundred and fifty-six (856) shares thereof; the defendant, George A. St. Clair, one thousand five hundred and eighty-eight (1588) shares thereof; and the defendant Eugene G. St. Clair ten (10) shares thereof, that your orator A. B. Meeker held two thousand nine hundred and fifty (2950) shares thereof, your orator William L. Brown fifty (50) shares thereof, and your orator T. B. Brooks five hundred (500) shares thereof, and that one A. C. Reed was the President and one J. M. Chapman was the Secretary of said company.

IV. Your orators further show that the said James O. St. Clair, Eugene G. St. Clair, George A. St. Clair and Julius N. St. Clair are brothers, residing at Ishpeming in the State of Michigan; that they are partners in various kinds of business under the firm name of St. Clair Brothers, and have been such partners under said firm name for a number of years. And your orators charge that the stock in said Winthrop Iron Company so as aforesaid held by the said George A. St. Clair and the said Eugene G. St. Clair belonged in fact to said firm. That on the second day of August, A. D. 1877, the said Winthrop Iron Company made and executed to the said firm of St. Clair Brothers a lease of

its said mine for the period of five years from December 1st, A. D. 1877, that is to say, until the first day of December A. D. 1882, at a rental of (50) cents per ton of 2240 pounds of ore taken from said mine during the said term by the said lessees. That said lease was duly recorded in the office of the register of deeds of said county on the 23d of August, A. D. 1877, in liber 2 of miscellaneons records, page 458.

And your orators attach to this bill a certified copy of the record of said lease, marked "Exhibit B."

V. And your orators further show that very shortly thereafter, to wit, on the 9th day of August, A. D. 1877, the said St. Clair brothers, together with one H. J. Colwell and Harriet T. Colwell organized a corporation under the laws of the State of Michigan called the Winthrop Hematite Company, for the purpose of mining, refining, smelting and manufacturing iron ores and iron, and duly filed articles of association, as required by law, a copy whereof duly certified by the clerk of the county of Marquette is attached to this bill, marked "Exhibit C."

VI. And your orators show that all the stock of the Winthrop Hematite Company, except a portion thereof taken by the said Coldwells, was taken by the said St. Clair Brothers, and that shortly afterwards they bought out all the interest of the said Coldwells in said company and have ever since owned, and as your orators are informed and believe, still own all the stock of the said Hematite Company.

VII. That the said Winthrop Hematite Company was organized for the purpose of operating said Winthrop mine under the lease so as aforesaid executed by the said Winthrop Iron Company to the said St. Clair Brothers, and in pursuance thereof the said St. Clair Brothers, on the 22d day of August, A. D. 1877, by an instrument under their hands, assigned and set over the said lease to the said Winthrop Hematite Company, and the said assignment was recorded in the office of the register of deeds of the said county of Marquette, on August 23d, A. D. 1877, in liber 2 of mis-

cellaneous records, page 460; and your orators attach to this, their bill, as "Exhibit D," a certified copy of the said assignment.

VIII. That afterwards, to wit, on the 30th day of August, A. D. 1877, the said Winthrop Hematite Company assigned the said lease to the defendants, John N. Glidden and Dan. P. Eells, co-partners, of Cleveland, Ohio, and which said assignment was also recorded in the same office in liber 2 of miscellaneous records, page 619. And your orators attach to this bill a certified copy of the record thereof, marked "Exhibit E."

And your orators charge that the said assignment so made by the said Hematite Company to said Glidden and Eells was merely made as collateral security to secure a debt due or to become due from said St. Clair Brothers or said Hematite Company to the said Glidden and Eells, so that the said Hematite Company is still the beneficial owner of the said lease.

IX. And your orators further show that the said Winthrop Hematite Company has ever since its organization operated and worked the said Winthrop mine under said lease and has taken out large quantities of ore therefrom, and has paid to the said Winthrop Iron Company large royalties, so that up to a late period the stock of the said Winthrop Iron Company was a valuable stock and an income paying stock, and the amount of the royalties paid by the said Hematite Company was divided among the stockholders of the said Iron company annually or semi-annually at regular intervals.

That at the time of the payment of royalties under said lease for the six months ending July 15th, A. D. 1881, no dividend was declared, but the amount of money in the treasury of the said company was reserved until the receipt of the royalties for the ensuing six months by said company; and your orators charge that if a fair and reasonable amount of ore shall be mined by the said Hematite Company for the said year 1881, there should be in the treasury of the said

company, on the 15th day of January, A. D. 1882, about the sum of thirty thousand dollars, ($30,000,) which sum ought, in justice and equity, to be divided in the shape of dividends among the stockholders of said company.

X. And your orators charge that the said firm of St. Clair Brothers, during the summer of A. D. 1881, conceived the idea of so manipulating the affairs of the said Winthrop Iron Company as to make the same highly profitable to them and to render the stock of all the other stockholders of no value whatever, and with this fraudulent purpose and end in view the said firm commenced to purchase stock in the said Winthrop Iron Company until they had become the owners of twelve thousand six hundred and fifty-four (12,654) shares thereof, being a majority of the whole capital of the said Iron company; but instead of procuring such stock to be transferred to them upon the books of the said company they let it remain outstanding in the names of the parties from whom they purchased the same. And your orators allege that the stock so by them purchased, in addition to the one thousand five hundred and ninety-eight (1598) shares thereof, so as aforesaid standing in the name of George A. St. Clair, and Eugene G. St. Clair was the aforesaid stock belonging to estate of A. D. Reed, the stock belonging to A. C. Reed, and that belonging to said Colwells, and that the same stood as aforesaid on the books of the company in the name of Mrs. Mary Bell Carpenter, Mrs. A. D. Reed, Mrs. A. D. Reed, trustee, and Mary P. Reed, and that the said firm of St. Clair Brothers, or some one of them, caused a petition to be drawn up and to be signed by said Mary P. Reed, Mary Bell Carpenter, Mrs. A. D. Reed, Mrs. A. D. Reed, trustee, George A. St. Clair and Eugene G. St. Clair, and presented the same to A. C. Reed, president of said company, of which the following is a copy:

"To A. C. REED, *President of Winthrop Iron Company:*

"SIR: Will you please call a special meeting of the stockholders of the Winthrop Iron Company, October 1st, 1881, at twelve o'clock noon, as per printed notice appended hereto.

(Signed.)	Mary P. Reed, . . .	1,003 shares,
	Mrs. Mary Bell Carpenter,	1,667 shares,
	Mrs. A. D. Reed, . . .	2,000 shares,
	Mrs. A. D. Reed, Trustee,	1,667 shares,
	George A. St. Clair, . .	1,588 shares,
	E. G. St. Clair, ...	10 shares."

And attached to said petition, when presented to said A. C. Reed, President, was the following notice which the said St. Clair Brothers requested the said Reed to sign and to have sent to the stockholders of the said company, that is to say:

"A special meeting of the stockholders of the Winthrop Iron Company is hereby called, to be held at the office of A. C. Reed, President, 100 Dearborn street, Chicago, Illinois, October 1st, 1881, at twelve o'clock noon, for the purpose of considering and acting on the following propositions, viz: removal of general office of the company to Ishpeming, Michigan; election of officers of the company and directors to fill any vacancies which may occur; to authorize the board of directors to make certain necessary improvements at the mine; to authorize extension and changes in lease of the property of the company to the Winthrop Hematite Company; to transact such other business as may legally come before said meeting."

And the said A. C. Reed having previously sold the said St. Clair Brothers all his stock in said company, and having no further interest therein, signed the said notice as president, and caused the said notice to be mailed to some or all of the stockholders of said company.

And your orators further show that on the 1st day of October, A. D. 1881, an alleged meeting of the stockholders

of said Iron company was held by virtue of the said notice. And your orators attach to this bill, marked *Exhibit F*, a copy of the record of the proceedings, which was made by the secretary of the said meeting as the same has been furnished to your orators on application by the said secretary. And your orators charge that neither the said Mary P. Reed, nor the said Mary Bell Carpenter, nor the said Mrs. A. D. Reed, nor the said A. C. Reed, nor the secretary, J. M. Chapman, or either or any of them, was present at said meeting; but your orators allege that said parties had all sold their stock to the said firm of St. Clair Brothers prior to signing the call for the said meeting, and that the only parties present at said meeting were Eugene G. St. Clair, his attorney, William S. Harbert, and one J. B. Breese, who acted as secretary of the said meeting; that the said Harbert and the said Breese had no interest whatever in said company, but attended at the request of the said St. Clair, and were allowed to represent some of the stock of the said St. Clair.

And your orators show that the said Mary P. Reed, A. C. Reed, and J. M. Chapman were, by a resolution adopted at said meeting, removed from office as directors of said company, and on motion of said Eugene G. St. Clair, George A. St. Clair, Julius N. St. Clair, and James O. St. Clair were elected as directors in their place. And a resolution was adopted at the said meeting that the board of directors of the said company be authorized and directed forthwith to proceed with work on a deep shaft at the mine for the development and secure working of the same; said shaft to be located and work done on the same under their direction, and one of their number to have full charge of the work and be recompensed for his services at the discretion of the board. And that a resolution was also passed that the revenues of the company not exceeding the sum of fifty thousand dollars should be devoted to the purpose of sinking a deep shaft at the company's mine and properly equip the same, and in case of necessity the board of directors

should call an assessment of the stock in the usual manner for the purpose of raising funds requisite for the prosecution of said work to its full completion. And that the board of directors were authorized and directed to execute a new lease of the said mine to the Winthrop Hematite Company, which should contain, substantially as nearly as might be, conditions and provisions similar to the lease under which said Hematite Company is now operating, except as the same was modified by the said resolution, which said lease should run for the period of eighteen years from and after the expiration of the term of the existing lease; and that the royalty to be paid by the Winthrop Hematite Company under the new lease should be twenty-five cents per ton of iron ore, instead of fifty cents per ton, as specified in the current lease.

And your orators show that the passage of the said resolutions was merely the carrying out of the fraudulent purpose of the said firm of St. Clair Brothers, and a part of their scheme to render the stock of your orators and the other shareholders in said company valueless.

Your orators charge that the resolution which authorized work to be done upon the deep shaft was entirely in the interest of the said lessee, the Winthrop Hematite Company, inasmuch as all the revenues of the company, not exceeding the value of fifty thousand dollars, were thereby to be devoted to the purpose of sinking a shaft by which the said Hematite Company were to take out ore from the mine of the Winthrop Iron Company.

Your orators also show that the royalty of fifty cents per ton specified in the existing lease to the said Hematite Company is a very low and inadequate royalty in view of the present demand for and price of pig iron; that the said royalty of fifty cents per ton was a fair royalty in the year 1877, when the said lease was executed, for the reason that the demand for and the price of iron at that time was much less than at the present time. That the rate specified in the said new lease to be executed to the said Hematite Company, of

twenty-five cents per ton, is a ruinous and fraudulent rate; that a fair royalty upon said new lease would be not less than the sum of seventy-five cents per ton, and your orators know of parties who would be glad to take a lease of the mine of the said Winthrop Iron Company and pay therefor seventy-five cents per ton royalty, and your orators attach to this bill an offer by Robert M. Cherrie, of Chicago, Illinois, whom your orators know to be responsible, offering to pay such royalty therefor.

XI. Your orators also show that by the terms of its charter or articles of incorporation the said Winthrop Hematite Company can only exist for the space of six years from the 9th day of August, in the year 1877, so that on the 9th day of August, in the year 1883, and only one year and seven days after the said existing lease expires by its terms, the said Winthrop Hematite Company will have ceased to have any existence as a legal corporation, and yet it was attempted at said meeting to execute to the said Hematite Company a new lease for the perion of eighteen years from and after the expiration of the term of the existing lease.

XII. And your orators show that the Winthrop Iron Company can only exist under its articles or charter for the space of eighteen years after the expiration of the term of said existing lease; and your orators charge that the attempt to extend the present lease or the attempt to execute a new lease to the Winthrop Hematite Company for such space of eighteen years was in fact an attempt on the part of the said St. Clair Brothers to render the stock of your orators and the other stockholders of the said Winthrop Iron Company, except the St. Clair Brothers, utterly valueless and non-income paying for the full term of the life of the said Winthrop Iron Company.

XIII. And your orators also show that at the said alleged meeting of stockholders a resolution was passed removing the general office of the said Winthrop Iron Company from the city of Chicago, where it had theretofore been, to the office of the bank of Ishpeming, at the city of Ishpeming,

in the State of Michigan. And your orators charge that all the books, records and papers of the said iron company, have been removed by the said St. Clair Brothers, to the said bank, and upon information and belief your orators charge that said firm are also the owners of the said bank.

XIV. And your orators show that the stock of the said Winthrop Iron Company is full paid, and the attempt at said stockholders' meeting to confer upon the board of directors the right to assess said stock was also fraudulent, and is illegal and void. And your orators file this bill not only in behalf of themselves, but also in behalf of all other stockholders of the said Winthrop Iron Company who may desire to come in and contribute to the expenses and share in the benefits thereof.

XV. And your orators charge that all the said proceedings of the said firm of St. Clair Brothers from the time they purchased a controlling interest in said stock up to and including the said meeting constitute a part of a fraudulent conspiracy whereby they hoped to reap to themselves alone all the benefits which could be derived from the ownership of the said Winthrop mine. And your orators claim that all of the said proceedings are utterly void, for informalities in calling said meeting of stockholders, for want of power in the stockholders to pass the resolutions they assumed to pass at said meeting, and for the fraud which the said firm of St. Clair Brothers have attempted to perpetrate upon the other shareholders of said company.

XVI. And your orators show that the said new board of directors are about to open said deep shaft, and are about to expend said sum of $50,000 or some portion thereof for said purpose, and are about to execute such new lease to said Winthrop Hematite Company, and that they will do all of said acts unless enjoined and restrained by this Court.

To the end, therefore, that the said Winthrop Iron Company, the Winthrop Hematite Company, James O. St. Clair, Eugene G. St. Clair, George A. St. Clair, Julius N. St. Clair, John N. Glidden, and Dan. P. Eells may be made parties

defendant to this your orators' bill, and may be required to show cause, if they can, why your orators should not have the relief hereby prayed, and may be required to make full, direct, and perfect answers to all the matters and things herein contained as fully and specifically as if such matters and things were here again repeated, but not under oath, their answers under oath being hereby waived, and—

1. That the proceedings of the said pretended meeting of stockholders held as aforesaid at Chicago, Illinois, on the first day of October, A. D. 1881, may be declared, adjudged, and decreed by this Court to be fraudulent and absolutely null and void, and of no effect. That an accounting may be had by said defendant corporations to and with their and each of their stockholders.

2. That the said George A. St. Clair, James O. St. Clair, and Julius N. St. Clair may be removed from office as directors of said Winthrop Iron Company.

3. That the said Winthrop Iron Company, its directors, officers, agents and servants may be enjoined and restrained from proceeding with any work on any shaft at said mine, and from paying out any money whatever for the purpose of sinking a shaft at said mine, and from making any assessment on the stock of said company for the purpose of raising funds for such work or for any other purpose.

4. That the said Winthrop Iron Company, its officers, directors, agents and servants be restrained and enjoined from executing any lease to the Winthrop Hematite Company.

5. That until the final hearing hereof a temporary injunction may be issued, restraining each of the said corporations and persons in manner and form as aforesaid, and that on the hearing, such injunction be made perpetual. That the usual and necessary writs of injunction issue to make this prayer effectual.

6. That a receiver be appointed by this Court of all the property of said Winthrop Iron Company, to take possession of all its property, real, personal and mixed of every nature and kind, wheresoever situated, and in whose hands

soever the same may be; and that all persons in possession of the same or any part thereof, and the income, gains or profits thereof, or of any books, papers, documents or accounts belonging to said company be required forthwith to deliver the same over to the said receiver. And that the usual assignment be made by said company to said receiver. That he be vested with the usual powers of a receiver in such case.

7. That your orators may have such other, further or different relief, or both, in the premises as shall be agreeable to equity and good conscience.

It may please your honors to grant unto your orators the usual writ of subpœna issuing out of and under the seal of this Honorable Court to be directed to said Winthrop Iron Company, the Winthrop Hematite Company, James O. St. Clair, Eugene G. St. Clair, George A. St. Clair, Julius N. St. Clair, John N. Glidden and Dan. P. Eells, commanding them and each of them, by a certain date and under a certain penalty to be therein inserted, to be and appear before this Honorable Court, then and there to answer to the premises and to stand to, abide by and perform such order and decree in the premises as shall be agreeable to equity and good conscience.

And your orators will ever pray, etc.

ARTHUR B. MEEKER,
WILLIAM L. BROWN,
T. B. BROOKS,
By F. ULLMANN,
His Solicitor.

NORRIS & UHL,
Solicitors.
FRED ULLMANN,
Of Counsel.

UNITED STATES OF AMERICA, } ss.
Northern District of Illinois. }

STATE OF ILLINOIS, } ss.
Cook County. }

William M. Brown, being duly sworn, on oath states, that he is one of the complainants named in the foregoing bill; that he has read said bill and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are there stated on information and belief, and as to those matters he believes it to be true.

WILLIAM L. BROWN.

Subscribed and sworn to before me, this 12th day of November A. D. 1881.

[SEAL.] ULLMAN STRONG,
Notary Public, Cook County, Illinois.

ANSWER.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION.

IN EQUITY.

The joint and several answer of the Winthrop Iron Company, the Winthrop Hematite Company, James O. St. Clair, Eugene G. St. Clair, George A. St. Clair and Julius N. St. Clair, part of the defendants to the bill of complaint of Arthur B. Meeker, William L. Brown and T. B. Brooks, complainants.

These defendants jointly and severally answering to the said complainants' bill answer as follows:

1. These defendants admit the several averments contained in the first paragraph of the said complainants' bill of complaint as set forth therein.

2. They deny the averment contained in the second paragraph of said bill, namely: That on the first day of October, 1881, the estate of A. D. Reed owned 9999 shares, or any shares of stock of the said Winthrop Iron Company, and they deny that any of the parties named in said paragraph owned any of the said stock on the said first day of October; but they admit that on the 12th day of September, 1881, and prior thereto said Mary P. Reed, Mrs. Belle Carpenter and Mrs. A. D. Reed, owned stock in said company to the amount of 9999 shares, or thereabouts.

3. They say in answer to the third paragraph of complainants' bill that there is no averment as to the time when A. C. Reed held shares in said company, but they admit that prior to September 7th, 1881, and not afterwards, he held shares as stated in said paragraph; but they deny that Harriet Colwell at said date held stock in said company, or that

she had held any stock therein a long time previous to said date. They admit that at said date the remaining parties named in said paragraph held and now hold the several number of shares averred to be held by them, and they admit that A. C. Reed was then the president and that J. M. Chapman was then the secretary of said company, and they continued to hold said offices, respectively, up to October 3d, 1881.

4. These defendants admit, as stated in the fourth paragraph of said bill, that defendants James O. St. Clair, Eugene G. St. Clair, George A. St. Clair and Julius N. St. Clair are brothers, and that they reside at Ishpeming, Michigan; but these defendants deny that said brothers are partners in several kinds of business, or in any business at the present time; but they admit that said brothers were partners under the firm name of "St. Clair Brothers," up to some time in the fall of 1877, but not after that fall; that several years prior to the fall of 1877 the four brothers had done business as partners under the name of "St. Clair Brothers;" that under said firm name they took the lease from the Winthrop Iron Company, and afterwards assigned the same to the Winthrop Hematite Company. They aver that the said brothers were engaged in different enterprises, sometimes under the name of "St. Clair Brothers," and at other times they were mutually interested in matters without using the firm name. These defendants aver that said brothers ceased from any co-partnership in the fall of 1877; that since said date all their interests have been divided and held separately, and they admit that they have been interested together in various enterprises in which each one had individual interests in different proportions, but not as partners. These defendants deny that the stock held by said George A. St. Clair and Eugene G. St. Clair belonged to said firm, but they admit that the stock was held in different proportions by them as individuals but not as partners. They admit the execution of the lease to St. Clair Brothers, stated in the paragraph.

5. These defendants admit the formation of the Winthrop Hematite Company as averred in the fifth paragraph of said bill.

6. These defendants admit the averment contained in the sixth paragraph of said bill, except this only: They aver that said St. Clair Brothers held said stock mentioned therein as individuals, and not as partners.

7. These defendants admit the averment contained in the seventh paragraph of said bill.

8. These defendants admit the assignment of the lease as averred in the eighth paragraph of said bill, and also that it was assigned for the purpose in said paragraph stated, but they aver that it has been reassigned to the Winthrop Hematite Company, and is now held by said company.

9. To the ninth paragraph of said bill these defendants say they admit that the Winthrop Hematite Company have worked the mines as stated, and they admit that it has paid to the Winthrop Iron Company some royalties and that the stock was of some value; but they deny that such royalties were large, and they deny that the said stock was ever especially valuable; they deny that the royalties paid were divided among the stockholders of said Winthrop Iron Company at regular intervals; they admit that no dividend was paid July 15, 1881, and these defendants aver that the reasons why no dividend was then declared are truly set forth, as follows:

In 1881, up to July 15th, the sum of $2,874 only was paid in as royalties by the Winthrop Hematite Company as lessee, and this was all that was due for royalties to that date; that of this amount the sum of $2,844.63 was expended by the Winthrop Iron Company for proper and legitimate purposes, that is for salaries, taxes, notes of the company, interest on the same, etc., leaving only $25.37 which was delivered to Eugene G. St. Clair, treasurer of said company, who succeeded A. C. Reed as treasurer October 3, 1881. These defendants aver that none of the St. Clair Brothers had anything to do in distributing the several sums thus paid out

on behalf of said Winthrop Iron Company. These defendants deny that upon the supposition contained in said paragraph there should be $30,000 in the treasury on January 15, 1882, but they aver that the total amount of royalties due to said Winthrop Iron Company on said date for ore shipped will be about $19,000; that the charges against this royalty will be as follows, viz: Money expended on the deep shaft hereinafter mentioned, $3,500; local taxes to be paid for 1881, $1,600; specific taxes due in July, 1882, $434; note and interest due in June, 1882, about $1,300; which note was given in 1875 or 1876 for certain surface rights to land adjoining the land of said company; salaries and incidental expenses about $1,200; making an aggregate of about $8,034, and leaving a balance of about $11,000 that will be on hand January 15, 1882, without including any expenses incurred in the continued sinking of the deep shaft ordered by said company.

10. Answering to the tenth paragraph of said bill, these defendants aver that in the summer of 1881 the defendant, Eugene G. St. Clair, bought stock of the said Winthrop Iron Company, so that with the amount held by said George A. St. Clair, together with the amount of stock he then owned, they both held the amount named in said paragraph, namely, 12,654 shares; but they deny that said stock is owned by said St. Clair Brothers, and they deny that it was purchased by them as partners. These defendants aver that the amount of said stock purchased during the last summer by the said Eugene G. St. Clair was purchased by him for his wife and his brothers as individuals. These defendants say that in the fall of 1879 Eugene G. St. Clair attempted to buy 11,056 shares of said stock from A. C. Reed, acting for all parties who were then owners of the same; that negotiations were made, partly verbal and partly by letters, to purchase the same, which negotiations were not then consummated; that said parties continued negotiations in reference to said stock until an agreement was actually completed between them in July, 1881; that nothing further was done about

it until August 30, 1881, at which date a bill of sale of the stock was received by said Eugene G. St. Clair, who then paid about one-third part of the purchase money, and at that time about 4,000 shares of the stock was delivered to him, and the bill of sale of all of said stock was then delivered to the Fidelity Vault Company by said Reed; that at the same time said Eugene G. St. Clair delivered to said Fidelity Vault Company for said Reed time checks for the unpaid portion of the purchase price of said stock on a bank payable on demand; and the agreement between said parties was that when said Reed should deliver to said Fidelity Vault Company for said St. Clair the remainder of said stock properly assigned said checks should be delivered to said Reed; that said stock was so delivered to said Fidelity Vault Company between September 2d and September 7th, inclusive, in the year 1881; and said checks were delivered to said Reed and paid; that on said 7th day of September said Eugene G. St. Clair actually received the said certificates of stock thus left with the said Fidelity Vault Company, and then first became the legal and equitable owner of said stock. These defendants admit, however, that said stock, amounting to 11,756 shares, remained on the books of the said Winthrop Iron Company in the names of the vendors thereof, as stated in said bill; they admit that the petition for a special meeting of stockholders of said company was made at the request of said Eugene G. St. Clair, and that the copy thereof set forth in the bill of complaint is correct; they admit that A. C. Reed signed the call or notice of such special meeting as president of said company. These defendants aver that at the time said Reed signed the call for said special meeting, which was on or about the 30th day of August, 1881, he was in fact the president of said company; that he had not then parted with his stock therein, and that he was then, both in fact and of record, a stockholder of said company, and these defendants insist that he continued to be a stockholder in said company until September 7th, 1881; they also insist that all the other parties who held portions

of 11,056 shares previous to such purchase as mentioned aforesaid remained stockholders in said company until said September 7th, 1881, both in fact and of record.

These defendants aver that all the stockholders in said company, complainants included, had legal service of the notice of the time and place of holding of said special meeting made upon them; these defendants admit that the meeting was held October 1st, 1881, as averred in said bill, and that the parties charged as not being present at said meeting were in fact absent therefrom; and these defendants admit that said parties thus averred to be absent were not then stockholders, and that they had sold their stock as hereinbefore set forth, and that they ceased to be stockholders on the 7th day of September, as above stated; these defendants deny, however, that said parties had sold their stock prior to the time when the call for said meeting was signed. These defendants admit that the only parties present at said meeting were stated in said bill, and that said Harbert acted as chairman and said Breese as secretary, as averred in said bill; these defendants admit that "Exhibit F," referred to in said paragraph and attached to said bill, correctly states the number of shares of stock which was represented at said meeting, which stock was held by said Eugene G. St. Clair as trustee; they admit, also, the correctness of the proceedings of said meeting as set forth in "Exhibit F" attached to said bill. These defendants aver that the removal of said Mary P. Reed, A. C. Reed and J. M. Chapman from their office as directors was made because they had ceased to be stockholders in said company, and therefore their said office had become vacant; these defendants aver, on information and belief also, that said persons had declared that they did not consider themselves as directors any longer, that they had each one resigned the office of director then, and the defendant, Eugene G. St. Clair, then had their resignation in his hands, and so stated at said meeting; and, also, exhibited said resignation at said meeting, which resignation is in the following words:

"CHICAGO, *September* 1*st*, 1881.

Directors of the Winthrop Iron Mining Company:

GENTS: Please accept herewith our resignation as directors in the Winthrop Iron Company, also our resignation as Secretary and President and Treasurer of the same company, same to take effect at once, and oblige yours, respectfully,

J. M. CHAPMAN, *Secretary*,
A. C. REED, *Pres't & Treas'r*,
M. P. REED,
Directors.

These defendants aver, that after said resignation and acceptance thereof by the removal of said former directors, the only directors then remaining in office were Eugene G. St. Clair and Arthur B. Meeker, and that it became necessary to elect other directors to fill the vacancies in the board; but these defendants deny that any of the St. Clair brothers ever conceived the idea of so manipulating the affairs of said Winthrop Iron Company as to make the stock thereof highly valuable to them exclusively, to the injury of any other stockholder, and render the stock of the other holders of no value; these defendants deny that any of said brothers had any fraudulent purpose in purchasing said stock, or in owning a majority thereof; and they aver that they have already set forth in this paragraph the reasons why said stock was not sooner transferred on the records of said company; these defendants deny that a passage of any resolution which was passed at said meeting was the carrying out of any fraudulent purpose on the part of any of these defendants, and they also deny that it was a part of any scheme to render the stock of the complainants or of any of the stockholders in said company valueless; they aver on the contrary that every step taken at said meeting will result, and was intended to result, to the benefit of all the stockholders in said company, and for the reasons hereinafter stated; these defendants deny that the resolution in

reference to the new shaft and for the expenditure of not exceeding $50,000 therefor was entirely in the interest of said lessee, but they aver that the sinking of said shaft ordered at the said special meeting will be for the benefit of all the stockholders in said Winthrop Iron Company as hereinafter stated; these defendants deny that the royalty of fifty cents a ton is a low and inadequate one in view of the present price of pig-iron; they deny that said rate was a fair royalty in 1877, but aver that experience shows that said rate was in fact a very high one for royalty at that time; they deny that any royalty greater than twenty-five cents per ton on the new lease would be a fair one in view of the difficulties attending mining on the property of said Winthrop Iron Company; they deny that said last named rate is a ruinous and fraudulent rate, and these defendants have hereinafter set forth the reasons why such diminished rate is a reasonable one and quite enough to be paid to said company; these defendants deny on information and belief that any person or persons really responsible would be willing to pay a royalty of seventy cents per ton, and they deny that the letter attached to said bill is a *bona fide* to take a lease of said mine and pay a royalty of seventy-five cents a ton on ore mined therein. These defendants aver on information and belief that said Robert M. Cherrie never visited said mine and knows nothing of its character or of the difficulties attending the working said mine, which difficulties are hereinafter set forth.

11. These defendants answering to the eleventh paragraph of said bill admit that by the terms of the articles of incorporation of the Winthrop Hematite Company it was only to continue for six years, but they aver that under the provisions of law said articles have been amended extending the duration of its existence to thirty years.

12. These defendants admit the averment contained in the twelfth paragraph of this bill, to the effect that the Winthrop Iron Company could only exist under its present charter for the period of eighteen years after the expiration of

the term of its existing lease, but they deny that the attempt to execute a new lease to the Winthrop Hematite Company for said period of eighteen years was an attempt on the part of the St. Clair Brothers or on the part of any of them to render the stock of the complainants or of any other of the stockholders of the said Winthrop Iron Company valueless or non-income paying for the full term of the life of said company; on the contrary, these defendants aver that said new lease, if its terms be faithfully carried out by said company, will be likely to insure more royalties than said company has ever received under the old lease and for the reasons hereinafter stated.

13. These defendants admit the several averments contained in the thirteenth paragraph of said bill.

14. These defendants deny that the stock of said Winthrop Iron Company is full paid stock, but they aver, on information and belief, that the amount of capital stock of said company actually paid in is only $8,000, while the whole stock of said company is $500,000; they aver that it so appears by the articles of association; there is no record to the contrary, and these defendants are informed and believe, and, therefore, charge the fact to be, that said records are in all respects true. These defendants deny that the attempt to assess said stock is illegal and void as alleged in the fourteenth paragraph of said bill to which this paragraph is an answer.

15. These defendants deny all the allegations contained in the fifteenth paragraph of said bill of fraud on the part of said St. Clair Brothers, and all the allegations of a conspiracy on their part to reap to themselves alone all the benefit which could be derived from the ownership of the Winthrop Iron Mines; they deny that the proceedings of said special meeting are void for informalities, or for want of power on the part of the stockholders to pass the resolutions which were there passed, or for any fraud on the part of said St. Clair Brothers or either of them, attempted by them or either of them to be perpetrated upon the other share-

holders of said company; and these defendants aver that no specific informalities are shown in said paragraph or elsewhere in said bill.

16. These defendants answering to the sixteenth paragraph of said bill admit that the said new shaft was directed to be sunk by the resolution passed at said special meeting held as aforesaid; that the said new board of directors are not only about to open, but have actually commenced the opening of said deep shaft; that on the first day of December, 1881, when the injunction was served in this cause, said shaft had been sunk to a depth of between 60 and 70 feet, which depth has since been increased so that said shaft is now about 100 feet deep, and these defendants say that by the 17th day of January, 1882, it will be from 105 feet to 125 feet deep.

These defendants aver that the lease mentioned in this paragraph has been actually executed and delivered, and that it was executed and delivered to the Winthrop Hematite Company before these defendants, or any of them, had any knowledge or information of any kind that the complainants' bill had been filed in this case; they admit, however, that said lease was not recorded until December 1st, 1881, but they aver that it was so recorded before service of the subpœna and injunction in this case which were served later on the same day; these defendants aver that said lease was recorded before they or any of them had any knowledge or information of the filing of the bill of complaint in this case.

17. These defendants not only deny all conspiracy on the part of the defendants, James O. St. Clair, Eugene G. St. Clair, George A. St. Clair and Julius N. St. Clair to injure for their own profit, or for any purpose the value of the stock of complainants and other stockholders of said Winthrop Iron Company by the proceedings hereinbefore set forth; but they aver that the course determined by the stockholders of said Iron company at the said special meeting was a wise and prudent course, and well calculated to ad-

vance the interests of said company and to increase the value of its stock, and this for the following among other reasons:

18. They aver that the sinking of the deep shaft, as determined upon in said meeting, was a necessity for the profitable working of said mines; and without it or some similar improvement in the course of two or three years the mine could not be worked at a profit, and it would become necessary to abandon it.

19. They aver that by the sinking of said shaft the product of the mine will be very largely increased, so that the proceeds of the royalty determined upon at said meeting would enable the defendant, the said Winthrop Iron Company, to make upon an average larger dividends than had ever before been made or declared.

20. They aver that the royalty fixed upon and incorporated in the new lease of twenty-five cents per ton is not only a reasonable sum, but is a liberal and large remuneration and greater than that received by most mining companies in the vicinity, especially when reference is had to the difficulties of working said mine from the exceedingly great over heavy water charge, and from the loose, jointy and unsafe character of the rock in which the ore is found.

21. They aver that said lease for these and other reasons is a decidedly advantageous one for said Winthrop Iron Company, and will increase instead of lessening the value of the stock and the amount of the dividends thereof.

22. These defendants aver that while under the said lease for six years, the said Winthrop Iron Company received considerable revenue and made several dividends among its stockholders, the said lease has proved uprofitable to the lessee, the Winthrop Hematite Company; and they aver that no lease could be successfully taken by any lessee of said mine under its present condition at said rate of 50 cents per ton to be paid as royalty, nor even at the diminished rate of 25 cents per ton, as provided in said new lease hereinbefore mentioned.

23. These defendants submit that the said complainants have not in and by their said bill shown such a case as entitles them to any relief from a court of equity, and these defendants ask the same benefit of this defense as if they had demurred to said bill.

24. All which matters and things these defendants are ready to maintain and prove as this Honorable Court shall direct; and pray to be hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

THE WINTHROP IRON COMPANY,
By E. G. ST. CLAIR, *President.*
THE WINTHROP HEMATITE COMPANY,
By J. O. ST. CLAIR, *President,*
JAMES O. ST. CLAIR,
EUGENE G. ST. CLAIR,
GEORGE A. ST. CLAIR,
JULIUS N. ST. CLAIR.

M. H. CROCKER,
Solicitor for Def'ts.
C. I. WALKER,
Of Counsel.

DECREE.

UNITED STATES OF AMERICA.

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Northern Division.

IN EQUITY.

At a session of said Court, held at Grand Rapids, in Court House, on the sixth day of April, A. D. 1883.

Present, HON. JOHN BAXTER, *Circuit Judge.*

ARTHUR B. MEEKER, WILLIAM L. BROWN *and* L. B. BROOKS, *Complainants,* *vs.* WINTHROP IRON COMPANY, WINTHROP HEMATITE COMPANY, JAMES O. ST. CLAIR, EUGENE G. ST. CLAIR, GEORGE A. ST. CLAIR *and* JULIUS N. ST. CLAIR, *Defendants.*	Bill in Equity by Minority Stock.

This cause came on to be heard before the Court, at Grand Rapids, on the 2d day of October, 1882, by consent of the parties, on pleadings and proofs, and was argued by counsel for the respective parties; and the Court, upon the consideration thereof, doth now order, adjudge and decree, as follows:

I. That the lease mentioned in the bill, and bearing date November thirtieth, 1881, executed by the Winthrop Iron Company, of its mining lands and mines, together with all improvements, houses, railroad tracks and tramways, pockets on the surface, and other fixtures, to the Winthrop

Hematite Company for the term of eighteen years from December first, 1882, at the royalty of twenty-five cents per ton of ore mined and shipped, is null and void, for the fraud of the defendants the Winthrop Hematite Company and the St. Clair Brothers in procuring the same.

II. That Andrew G. Clark, of Chicago, Illinois, former President of the Winthrop Iron Company be, and he hereby is, appointed by this Court to be Receiver of the defendants, the Winthrop Iron Company, with the usual powers of Receiver in Equity, upon his giving bond in the penal sum of twenty-five thousand dollars, with sufficient sureties, to be approved by the Clerk of this Court, conditioned for the faithful performance of his trust, and that upon the delivery and filing of such bond, the said Receiver so appointed, shall be vested with all his rights and powers as Receiver.

III. That the Winthrop Iron Company, its officers, agents and servants, and the Winthrop Hematite Company, its officers, agents and servants, and the said defendants, the St. Clairs, forthwith surrender and deliver to said Receiver, all the real estate, mines and mining equipments, assets, materials, tools, machinery fixtures, effects and property of every nature and kind of or belonging to the said Winthrop Iron Company; and also all money, notes, drafts, bills of exchange, checks or other evidences of indebtedness due and owing to said Winthrop Iron Company, as well as all corporate records and papers, all record and books of account, all deeds, leases, bonds, mortgages, certificates of stock, vouchers and all papers of every nature belonging to said Winthrop Iron Company.

IV. That said Receiver continue the management of the said business of the Winthrop Iron Company, with power to lease or operate its mines and plants, until the further order of this Court; that he keep a full and accurate account of all his acts and doings as such Receiver, and report the same from time to time to the Court as may be directed;

and that said Receiver have leave to apply to the Court from time to time for such further orders and directions as may be necessary.

V. And the Court doth further adjudge and decree that the defendants, the St. Clair Brothers and the Winthrop Hematite Company, do account as trustees to and with the Winthrop Iron Company for all profits realized since December 1st, 1882, from the use and occupation of the said Winthrop Iron Company's real estate and personal property, or for a reasonable royalty upon the ore mined by them, or any or all of them, and that the complainants do now elect whether this accounting shall proceed upon the basis of the profits realized from use and occupation or reasonable royalty upon ore mined; and the said complainants, by their counsel, having elected that the accounting do proceed upon the basis of reasonable royalty: Thereupon the Court doth further order, adjudge and decree that it be referred to Henry M. Hinsdill, one of the Masters of this Court, who appears to this Court, from its knowledge of his experience in matters of accounting and his methodical and business habits, best qualified to discharge that duty, to take and state an account herein as follows:

1. That the said defendants St. Clair account to and with the Winthrop Iron Company concerning the ores mined by them and the royalty upon such ores due and owing from them to the Winthrop Iron Company, and concerning the rights and obligations of the lessor and lessee, under and according to the terms of the lease mentioned in said bill, bearing date August 2d, 1877, and expiring on December 1st, 1882.

2. That the said defendants, St. Clair and the Winthrop Hematite Company account to and with the Winthrop Iron Company for the use and occupation of its mining lands, mines, real estate and personal property, for all ore mined since the first day of December, 1882; for all property and

effects taken from the said Winthrop Iron Company's premises and used and converted; and that for the purpose of the said accountings, the said Winthrop Hematite Company, its officers and agents, and the said defendants, St. Clair, produce before the said Master, upon the said Master's order and drection, for examination, all books of accounts, papers, memoranda, and all other writings containing any entries concerning said matters, or any of them.

3. And the said Master in taking the said account, is directed to take and state the same in such manner as to furnish a basis for ascertaining and reporting the proper royalty to be charged to the Winthrop Hematite Company, and to the defendants, St. Clair, or any or either of them, because of the possession, use and enjoyment of the said mining lands, mines, and personal property of the Winthrop Iron Company since December first, 1882, retained and kept by it and them after and succeeding the expiration of said aforesaid named first lease; and also to take and state all such accounting herein ordered, so as to show the whole money and property of the Winthrop Iron Company on hand, or that ought to have been on hand, on November thirtieth, 1881, or used and expended since November thirtieth, 1881, either by it, or by the defendants, the St. Clair Brothers, or by the Winthrop Hematite Company, or either or all of them, in any and all ways, in the management of the business, affairs, property and effects of the Winthrop Iron Company, together with the dates and amounts of such expenditures and for what purpose and purposes they were made; and also so as to show to what extent, if at all, such expenditure is, or may be of value to the Winthrop Iron Company; and also so as to show to what extent such expenditure is, or may be of value to the defendants Winthrop Hematite Company, or to the St. Clair Brothers, one, or both, or either or all of them; and whether the amount voted or in fact paid for salaries or wages to the officers, agents, or servants of the Winthrop Iron Company, was in

fact reasonable and just to the stockholders of said company, or otherwise, and what, if anything, should be the amount in that regard to be allowed.

The said Master is also directed to inquire and report such sum of money as, in his opinion, shall be a reasonable compensation to be allowed to the complainants and their solicitors and counsel, for services, fees and all other necessary expenses actually incurred by them, which allowances shall be paid out of the fund in the hands of the receiver (but no allowance or allowances of any kind for costs, expenses or otherwise, shall be made to the defendants St. Clair, or to the Winthrop Hematite Company, out of such fund.)

That such Master be at liberty to make special reports from time to time, and that he make his general report concerning the matters aforesaid, with all convenient speed.

VI. And the Court reserves to itself such further directions, as may be necessary to carry this decree into effect; concerning costs; or as may be equitable and just.

JNO. BAXTER, *Judge, &c.*

1118 119-180

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1883.

No......

The Winthrop Iron Company, et al.
Appellants,

VS.

A. B. Meeker, et al.
Appellees.

BRIEF FOR APPELLANTS

ON

MOTION TO DISMISS.

R. D. MUSSEY,
OF COUNSEL.

WASHINGTON, D. C.
R. BERESFORD, PRINTER, 523 SEVENTH STREET.
1883.

This Case comes before the Court under the following circumstances:

Judge Baxter holding the Circuit Court for the Western District of Michigan having passed a Decree adverse to the Defendants on the 6th of April, 1883, they asked an Appeal, which he refused on the ground that the Decree was Interlocutory and not Final.

On the 29th of April, 1883, Defendants applied to this Court for a Mandamus to compel the allowance of an Appeal. On the 7th of May, 1883, this Court issued a Rule directing Judge Baxter to show cause why an Appeal should not be granted, returnable at this Term, with leave to apply to Mr. Justice Matthews, (in whose Circuit the Case arose,) at Chambers, for an Appeal and Supersedeas. On the 31st of May, 1883, Mr. Justice Matthews heard the Application, allowed the Appeal, and granted a Supersedeas. At the hearing before him the Counsel for the Plaintiffs objected to the Supersedeas Bond as being insufficient in amount and the Defendants agreed to give one, if demanded, at this Term, in the penalty of $100,000.

The question involved by the Mandamus proceedings being solely

> Whether the Decree sought to be appealed from was a Final Decree,

and Mr. Justice Matthews having allowed an Appeal, it has been a matter of Stipulation between Counsel that the Mandamus proceedings be discontinued and the question therein involved be presented upon Motion, made by the Plaintiffs, to dismiss the Appeal.

Is the Decree a final one in the sense of the law regulating the appellate jurisdiction of this Court?

While, in Law cases, there is no difficulty in determining whether the judgment sought to be reversed, is final,

> it has not always been easy to decide when decrees in equity are final within this rule,

to cite the language of this Court in *Bostwick* v. *Brinkerhoff*, 106, U. S., 4.

Hence it is that the Appellees differ here not only with the Appellants, as was to have been expected, but also with Mr. Justice Matthews, whose *frank and free conviction that the Decree was final* is met by the Appellees with a learned review of some (not all) the cases before this Court in which this question has arisen.

When the Application for a Mandamus was made Counsel for the Petitioners had before him only an Abstract of the Pleadings. Based upon these were the following remarks:

> The case made by the petition must appeal strongly to the equitable instincts of this Court.
>
> The Bill is by a Minority of the Stockholders to avoid the action of a Majority against which no remonstrance was made to the Corporation.
>
> The objectionable action was a lease of the Corporation property, which did not by its terms begin until December last. The case was heard in October last, and a decision was promised for December. That Decision was not made at that time, and the lease not having been declared void the Lessees used the Winter Season for necessary preparation.
>
> Just as the shipping and active producing season begins a Decree is rendered which dispossesses the Lessees, and the Company, of the property and, if it is to be held interlocutory, prevents those who have made expenditures and preparations from completing their arrangements and works disaster against which no indemnity has been provided.
>
> The delay of the decision from December to April has prevented an earlier application to this Court, and the necessary haste with which this application has been made prevents a full discussion of the vital question whether the Decree complained of is *Interlocutory*,

as held by the learned Judge who denied the Appeal, or *Final*, within the judicially ascertained intent of those terms.

An analysis of the abstract of the Pleadings made in the Petition shows that the objective point—the main purpose—of the Bill was the annulling of the Lease. Joined with this were the minor objects of the removal of certain Directors, an injunction against certain work, and the appointment of a Receiver. The Court decreed the lease void, and was silent as to the removal of Directors and the work on the deep shaft. So far as the main object is concerned the Decree is plainly final.

An accounting is also asked for. But from the statement of the Bill there seems nothing in it on which to grant the Prayer.

The Decree does provide for an accounting, covering, it should be borne in mind, the period from December, 1882, to April, 1883, when the Defendants were in possession under the new lease, because the Court failed to render its decision, as promised, in the month that lease began to operate. It also appoints a Receiver as a substitute for the Directors, (and, indeed, as a substitute for the Company,) and as a finality rather than a temporary expedient. He is to have all the property, do all the work, and, apparently, to be the successor of the corporate entity of the Winthrop Iron Company, which is ousted of possession, control, and the exercise of corporate functions.

If this is not "final," what is? What can it be? The Courts of Michigan—of which State this Winthrop Iron Company is a creature—have held such an appointment to be a "finality" for appeal purposes, even when made by an order.

Barry v. *Briggs*, 22 Mich., 201.

The vigorous opinion of Ch. Justice Campbell in this case is strongly commended to the attention of the Court in connection with the consideration of the present application.

If these two main points in the Decree—the cancelling of the lease and the appointment of a Receiver—impress upon the Decree "finality," does the direction for "accounting" give it a preponderating "interlocutory" character?

It is submitted that the Accounting and the Reference to the Master are very similar to that passed upon in *Forgay* v. *Conrad*, 6 How., 201, which is cited and commented on in *Beebe et al.* v. *Russell*, 19 How., 283.

The language used by Mr. Justice Wayne in the latter case would seem to be applicable here:—

> The fact is, the order of the Court in that case for referring it to a Master was *peculiar*.

The attention of the Court has already been directed to the fact that Paragraph V. of the Decree directs an accounting from December 1, 1882, to the date of the Decree; and that this period embraces the time when the defendants were in possession under the Lease, which began to operate December 1, 1882, and which it was the chief object of the Bill to prevent going into effect.

The case was heard in October, 1882, and if the Court had decided it in December, 1882, as promised, there would have been no need of an accounting for this period.

It is but just to state that though the paragraph cited refers to this period for the accounting, some of the clauses of that paragraph contemplate an accounting between some of the parties to the bill antecedent to that as a preparation—so to speak—for the accounting rendered necessary by the delay of the Court in making its decision.

While this Court properly discourages immature appeals, it would seem to be equally proper that it should not countenance a construction of its appellate jurisdiction which will leave it in the power of the Circuit Courts, by postponing action on ancillary and minor and subordinate details of a litigation, to indefinitely delay a review of their decisions of the substantive points at issue. And especially in cases where the party in whose interest such delay appears to be had, gives no security to indemnify the other for the injury he may suffer while the latter stands ready to give such indemnity to his opponent if, only, he may have a review of the error he alleges.

After a careful perusal of the learned Brief of opposing Counsel, and in the further light thrown by the full Plead-

ings and the Opinion of his Honor, Judge Baxter, the conviction expressed in the foregoing remarks is not weakened.

The case as made in the Bill is this. The Winthrop Iron Company in 1877 leased its property at a certain royalty until December 1st, 1882, to the St. Clair Brothers, who assigned the lease to the Winthrop Hematite Company, a corporation of which they were the promoters and chief stockholders. With a fraudulent intent against the Winthrop Iron Company in which they were stockholders, these St. Clair Brothers bought up a majority of its stock, had a meeting of the Company called, at which new Directors were made; certain expenditures on a deep shaft authorized; the principal place of business of this (Michigan) Company changed from Chicago, Illinois, to Ishpeming, Michigan; and a seventeen years' lease of its property ordered from the Winthrop Iron Company to the Winthrop Hematite Company, to commence at the expiration of the first lease, namely, December 1st, 1882.

THE BILL was filed November 19, 1881. Its objects as expressed in the Prayers, which (exclusive of that for General Relief) are Six in number, are as follows:

1. The nullification of the meeting of the Iron Company* referred to and the action there had, and an accounting between the Iron and Hematite Companies and their respective stockholders.
2. The amotion of the new Directors of the Iron Company.
3. An injunction against the Iron Company's proceeding with work on the deep shaft.
4. An injunction against the Iron Company's making the new lease to the Hematite Company.
5. Such injunctions as are prayed for permanently to be made *pendente lite*.
6. For a receiver of the Iron Company.

* For convenience this Brief will speak of the "Winthrop Iron Company" as the "Iron Company," and the "Winthrop Hematite Company" as the "Hematite Company."

THE ANSWER denies all fraud, both generally and specifically, and is fully responsive to the Bill. The only point, however, necessary to the present discussion is that the Answer showed that the Lease sought to be forbidden from the Iron Company to the Hematite Company had been executed before the Defendants had notice of the filing of the Bill.

The OPINION of Judge Baxter is now presented to the Court by the Appellees, and may be referred to by them as showing the intention of that learned Judge in respect of the Decree he was about to make. (See pp. 32 and 33 of Appellees' Brief.) But it is submitted that it is not his *intention* which, at this time and on this motion, and under these circumstances, this Court can consider. It is his *Act* which is to be construed.

This controversy hinges upon the *Decree* which he signed and not upon the *Opinion* which he delivered.

An examination of that Decree shows it to be couched in phraseology more appropriate to a final Decree than to an Interlocutory Decree or Decretal Order. Paragraph VI of the Decree is as follows:

> And the Court reserves to itself such further directions as may be necessary to carry this decree into effect; concerning costs; or as may be equitable and just.

This is not the language by which a *cause* is reserved for a Final Decree upon the incoming of certain reports, testimony, &c. It is the assertion of the right of the Court to make such

> *directions as may be necessary to carry a decree into effect,*

bearing a striking analogy to the langauge used by Chief Justice Chase (on Circuit) in his decree in the case of *French and Shoemaker*, held by this Court (12 Wall., 86) to be a final and Appealable Decree, which is set out on pp. 91, 92 of the Report, viz.:

> Leave is given to either party to apply at the foot of this Decree for such further Order as may be necessary to its due execution, or as may be required in relation to any matter not finally determined by it.

And what in respect of phraseology is true of the 6th paragraph applies with full force to the Introduction, and some of the clauses or paragraphs; and in a lesser degree to others. In a word—if it be an Interlocutory Decree—it has been run in a mold used for casting Final Decrees.

But it is not in form alone that this Decree bears marks of Finality. Its substance is impregnated with that character.

The relief sought against the Hematite Company was that the Iron Company should not execute the new lease to it. The 4th Prayer of the Bill is addressed directly to that end; and the 1st Prayer indirectly, but potentially, in seeking the nullification of the proceedings of the Special Meeting of the Iron Company at which the Lease was voted to be made. This relief is the main object of the Bill—the sole object so far as the Hematite Company is concerned—except a clause in the first Prayer, unsupported by any case made in the Bill, for an Accounting by this (and the other Company) with stockholders.

Paragraph I of the Bill is responsive to this purpose. It does not forbid the execution of the Lease—for that was an accomplished fact before Answer—but it does declare the Lease so made "null and void."

There all the jurisdiction of the Court over the Hematite Company *to be found in the Pleadings* was exhausted.

The sole interest in, and relation to, the case exhibited to the Court, of the Hematite Company, was passed upon, and so passed upon that nothing remained to give the Decree effect. The Entry of that Decree in the proper Records would have been as complete a destruction of the Lease as could have made by the most solemn act of either party to it, or both combined. No subsequent "directions" were "necessary to carry the Decree into effect." The law of the

case, the facts of the case, the merits of the case were all disposed of so far as the Hematite Company was concerned. For the Court did not, as it could not, on the pleadings, decree any accounting by the Hematite Company with its stockholders.

The finality of the Decree in respect of the Hematite Company was still further enforced by the appointment of a Receiver for the Iron Company to whom that Company and the Hematite Company were to deliver all books, property, &c., belonging to the Iron Company, so that not only was the Iron Company incapacitated from executing *any* lease to the Hematite Company in lieu of the one that had been declared null, but the Iron Company was in effect wiped out of existence. And, as was pointed out in the Remarks, (cited above,) submitted with the Petition for a Mandamus, action was taken which, under the law in the State of which the Company was a creature, was "final."

It is true that this Court has, in many cases, held an appointment of a Receiver to be an Interlocutory proceeding. But it is submitted with confidence, that such Receivers were temporary, for the purpose of protecting property pending litigation, and until final decrees could be made, and not Receivers appointed as the successors of corporations as the Receiver prayed for in the 6th Prayer of the Bill and instituted by Paragraphs II, III and IV of the Decree would seem to be. It is only those Receivers who are *Conservators* of a fund, an estate, a corporation, the creation of whom can properly be classed in the category of Interlocutory Action. Receivers who are *Liquidators* of an estate, a fund, a corporation are the result of Final determination and to effect a Final purpose. An Order creates the former to hold what is confided to them while the rights of claimants are being ascertained; the latter are called into being by a Decree after the ascertainment of those rights as a means of enforcing them. It is superficial and illogical, and undiscriminating to confound these two classes, or to hold because the majority of persons called Receivers belong to the former class that they all do.

While there may possibly be some room for a contention that the Receiver named in this Decree did not belong to the latter of the two classes of Receivers named above as to all the Defendants, it is too plain for argument that he sustained that relation in respect of the Hematite Company, the rights of which had been finally adjudicated.

Paragraph V. of the Decree provides for certain accounting, and the Appellees contend that until that accounting has been had, and the Court has sanctioned the Master's Report—this case is undecided by the lower Court and must remain there.

Attention is invited to what was said of this "Accounting" in the Remarks submitted with the Petition for Mandamus.

They are more than justified by the full Record. For the purposes of this hearing there have been printed only the Bill, Answer and Decree. The Decree bears date in April, 1883. The Lease, the Bill sought to prevent, was to have begun in December, 1882. The Bill filed in 1881 did not pray an accounting on the part of any one for the period intervening between December, 1882, and April, 1883. To have done that would have required the gift of prophecy.

The Answer, as has been shown, admitted the execution of the Lease, and therefore the Court had authority to respond to the Prayer that the Lease be not made, by cancelling it after it had been made. But neither by Bill, nor Answer, nor by any supplemental proceeding, petition, motion or affidavit does it appear that the Court had any information or suggestion even, that any entry had been made under that Lease, after the case was "heard" in October, 1882, and while it was *sub judice*, till the following April. Yet, in this conspicuous absence of ground on which to proceed the Court does Decree (Paragraph V.) an accounting by certain parties in respect of profits made from the mine,

realized since December 1*st*, 1882,

and gives a series of elaborate directions as to how such accounting shall be taken, treating that as a fact whose consequences are to be inquired into, of the existence of which not a hint appeared in the Record.

Possibly, the objection that all this was beyond jurisdiction of the Court, *on the case made before it*, would be more appropriate to the final hearing of the case here, than on this motion. That it should be stated now, if not discussed, is fit. For the fact of this Decree for this sort of accounting is relied upon by the Appellees as a support to their contention that the Decree is not Final; and one of the directions in respect of the accounting does, as was said, in the "Remarks" (supra)

> contemplate an accounting between some of the parties to the Bill antecedent to [December 1, 1882,] as a preparation—so to speak—for the accounting rendered necessary by the delay of the Court in making its decision.

It is not conceived by the Appellants that such direction for accounting will suffice to conceal the essentially final character of this Decree, the more so as this order of reference to a Master is, to cite Mr. Justice Wayne's comments on the *Forgay* and *Conrad* case, in pronouncing the opinion of the Court in *Beebe* vs. *Russell* (19 How., 283, 287,)

> *peculiar*, making it doubtful, if it could in any way control or quality the antecedent decree of the Court upon the whole merits of the controversy, or modify it in any way, *except upon a petition for a rehearing.*

It has not been thought necessary to reprint the decisions of this Court upon this subject of appealable finality in a Decree nor to review in detail those given in the learned Brief for the Appellees. The Appellants are ready to admit that this Court rightly desires cases that are to be presented to it, to be ripe for its consideration; and that it justly discourages the splitting of cases, and the consequent transference of *nisi prius* litigation to this high Appellate tribunal.

But this Court will not, it is confidently assumed, deny an Appeal to a party whose rights have been finally passed upon, because the Decree which ascertained them also directed an inquiry to be made by a Master, concerning the consequences of a supposed fact not brought to the attention of the Court by the pleadings, and which, if it existed, existed only because the Court below, by its omission for months to decide upon *the* case made before it, gave an opportunity for its happening.

The Appellees in their Brief inform the Court that the Appellants will "chiefly rely" upon the case of *Forgay* vs. *Conrad*, (6 How., 201.) We do rely upon it as an adjudication recognizing the fact that a Court sometimes passes a Decree which is so final, judged by the acknowledged standards, as to be appealable where it would have been possible and more orderly to have passed an Interlocutory Decree, or Order, announcing conclusions in accordance with which, after inquiry had into, and an ascertainment of, certain subordinate or collateral facts a final decree would, in due time, pass.

The Appellees' Brief does not give the whole of the Opinion in the *Forgay* and *Conrad* case. There is a portion of it so applicable to this case, that attention having been directed to it, it will be quoted:

> * * * We, however, feel it our duty to say that we cannot approve of the manner in which this case has been disposed of by the decree. In limiting the right of appeal to final decrees, it was obviously the object of the law to save the unnecessary expense and delay of repeated appeals in the same suit, and to have the whole case, and every matter in controversy in it, decided in a single appeal.
>
> In this respect the practice of the United States Chancery Courts differs from the English practice. For appeals to the House of Lords may be taken from an interlocutory order of the Chancellor, which decides a right of property in dispute; and, therefore, there is no irreparable injury to the party by ordering his deed to be canceled, or the property he holds to be delivered

up, because he may immediately appeal; and the execution of the order is suspended until the decision of the Appellate Court. But the case is otherwise in the courts of the United States, where the right to appeal is by law limited to final decrees. And if by an interlocutory order or decree, he is required to deliver up property which he claims, or to pay money which he denies to be due, and the order immediately carried into execution by the Circuit Court, his right of appeal is of very little value to him, and he may be ruined before he is permitted to avail himself of the right. It is exceedingly important, therefore, that the circuit courts of the United States, in framing their interlocutory orders and in carrying them into execution, should keep in view the difference between the right of appeal as practiced in the English chancery jurisdiction, and as restricted by the Act of Congress, and abstain from changing unnecessarily the possession of property; or compelling the payment of money by an interlocutory order.

Cases, no doubt, sometimes arise where the purposes of justice require that the property in controversy should be placed in the hands of a receiver, or a trustee be changed, or money be paid into Court. But orders of this description stand upon very different principles from the Interlocutory orders of which we are speaking.

In the case before us for example, it would certainly have been proper and entirely consistent with Chancery Practice for the Circuit Court to have announced, in an Interlocutory order or Decree, the opinion it had formed as to the rights of the parties, and the Decree it would finally pronounce upon the titles and conveyances in contest. But there could be no necessity for passing immediately a Final Decree, annulling the conveyances, and ordering the property to be delivered to the assignee of the bankrupt. The Decree upon these matters might and ought to have awaited the Master's report; and when the accounts were before the Court, then every matter in dispute might have been adjudicated in one final Decree; and if either party thought himself aggrieved, the whole matter would be brought here, and decided in one appeal, and the object and policy of the Acts of Congress upon this subject carried into effect.

These remarks are not made for the purpose of censuring the learned Judge by whom this Decree was pronounced, but in order to call the attention of the Circuit Courts to an inconvenient practice into which some of them have sometimes fallen, and which is regarded by this Court as altogether inconsistent with the object and policy of the Acts of Congress in relation to appeals, and at the same time needlessly burdensome and expensive to the parties concerned, and calculated by successive appeals to produce great and unreasonable delays in suits in Chancery. For it may well happen that, when the accounts are taken and reported by the Master this case may again come here upon exceptions to his report, allowed or disallowed by the Circuit Court, and thus two appeals made necessary, when the matters in dispute could more conveniently and speedily, and with less expense, have been decided in one.

Respectfully submitted.

R. D. MUSSEY,

For Appellants.

WASHINGTON, D. C., *October* 15, 1883.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM--1883.

THE WINTHROP IRON CO. et al.,
Appellants,

versus

ARTHUR B. MEEKER, et al.,
Appellees.

BRIEF

On Motion to Dismiss Appeal.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1883.

THE WINTHROP IRON CO. et al.,

Appellants,

versus

ARTHUR B. MEEKER, et al.,

Appellees.

BRIEF ON MOTION TO DISMISS APPEAL.

The bill in this case sets forth:

1st. That the Winthrop Iron Company is a corporation, organized in 1871, for the purpose of carrying on the business of mining; that it owns a valuable mine in the county of Marquette, in the State of Michigan; that its capital stock is $500,000.00 divided into 20,000 shares of $25 each.

2nd. That on the 1st day of October, 1871, and for a long time prior thereto, the estate of one A. D. Reed owned 9,999 shares of the stock, but it was held in the names of Mary P. Reed, Mrs. Mary Belle Carpenter, Mrs. A. D. Reed, and Mrs. A. D. Reed, trustee.

3rd. That the other shares were owned in the following manner: A. C. Reed, 201 shares; Harriet Colwell, 856 shares; George A. St. Clair, 1,588 shares; Eugene G. St. Clair, 10 shares; Arthur B. Meeker, 2,950 shares;

William L. Brown, 50 shares; T. B. Brooks, 500 shares; that A. C. Reed was the President and J. M. Chapman the Secretary of the company.

4th. That the defendants James O. St. Clair, Eugene G. St. Clair, George A. St. Clair and Julius N. St. Clair, are brothers residing at Ishpeming, Michigan, and are partners in various kinds of business under the firm name of St. Clair Brothers, and have been so for many years, and that as such partners they own the stock standing in the names of George A. and Eugene G. St. Clair. That on the 2d day of August, 1877, the Winthrop Iron Company executed to this firm of St. Clair Brothers, a lease of its mine for five years from the 14th day of December, 1877, at a royalty of fifty cents per ton upon all ore that should be taken from the mine.

5th. That on the 9th day of August, 1877, the St. Clair Bros., together with H. J. Colwell and Harriet P. Colwell organized a corporation called the Winthrop Hematite Company for the purpose of mining, smelting, etc.

6th. That all the stock of the Winthrop Hematite Company, except a portion thereof taken by the said Colwells, was taken by the St. Clair Bros., and shortly afterwards they bought out all the interest of said Colwells in said company, and have ever since owned all the stock of the Hematite Company.

7th. That the Hematite Company was organized for the purpose of operating the Winthrop mine under the lease executed by said Company to the St. Clair Bros., and on the 22d day of August, 1877, the St. Clair Bros. assigned said lease to the Hematite Company.

9th. The Hematite Company has, since its organization, operated the Winthrop mine under the lease; has taken out large quantities of ore; has paid to the Win-

throp Company large royalties, so that up to a late period the stock of the Winthrop Iron Company was a valuable and income-paying stock, and the amount of the royalties paid by the Hematite Company was divided among the stock holders of the Iron Company annually or semi-annually at regular intervals. That no dividend, however, was declared for the six months ending July 15th, 1881.

10th. That during the summer of 1881 the St. Clair Bros. conceived the idea of so manipulating the affairs of the Winthrop Iron Company as to make the same profitable to themselves and render the stock of no value whatever to the others, and with this fraudulent purpose, they began purchasing the stock of the Iron Company until they had become the owners of 12,654 shares thereof, being a majority of the whole, but such shares were not transferred to them upon the books of the company, but remained standing in the names of the persons from whom they had purchased the same.

That while thus situated they caused a petition to be drawn up and sent by the persons from whom they had thus purchased the stock, to A. C. Reed, President, for the purpose of calling a special meeting of the stockholders for the purpose of acting upon the following propositions:

First. The removal of the general offices of the company from Chicago to Ishpeming.

Second. The election of officers and directors to fill vacancies which might occur.

Third. To make necessary improvements at the mine.

Fourth. To authorize an extension of, and changes in, the lease to the Hematite Company.

Fifth. Such business as should legally come before such meeting.

That the said A. C Reed having previously sold the stock, signed the said notice and caused it to be mailed to some or all of the stockholders. That on the first day of October, 1881, an alleged meeting of the stockholders of the company was held by virtue of said notice, and a copy of the record of that meeting is annexed to the bill. The only persons present at said meeting were Eugene G. St. Clair, his attorney William S. Harbert, and one J. B. Breese who acted as secretary, the last two having no interest in the company but representing some of the St. Clair stock. At this meeting Mary P. Reed, A. C. Reed and J. M. Chapman, were, by resolution, removed from office as directors, and on motion of Eugene G. St. Clair, George A. St. Clair, Julius N. St. Clair and James O. St. Clair, were elected directors in their places. A resolution was adopted that the Board of Directors be authorized and directed forthwith to proceed with work on a deep shaft at the mine, said shaft to be located and the work done under the direction of the board, one of their number to have full charge of the work, and to be recompensed for his services by the board. A resolution was also adopted that the revenues of the company, not exceeding $50,000, be devoted to the purpose of sinking the deep shaft, and in case of necessity, the Board of Directors should levy an assessment upon all stock for the purpose of raising funds therefor; and the Board of Directors were authorized and directed to execute a new lease of the said mine to the Winthrop Hematite Company, which should contain substantially, as near as might be, the same conditions and provisions contained in the lease under which the Hematite Company was then operating, except as modified by the said resolution; said new lease to run for the period of eighteen years from the expiration of the existing lease; royalty to be paid

under the new lease to be twenty-five cents per ton instead of fifty cents as specified in the current lease.

Another resolution was adopted removing the offices of the company from Chicago to Ishpeming.

These resolutions, the bill avers, were but the carrying out of the fraudulent purpose already mentioned and a part of the scheme of the St. Clair Bros. to render the stock of the complainants valueless.

The bill charges that the resolution authorizing the sinking of the deep shaft was entirely in the interest of the lessee, as it devoted the revenues of the Iron Company to that purpose; that the royalty of fifty cents per ton specified in the original lease was a very low and inadequate royalty in view of the present demand for, and price of, pig iron, although it was a fair royalty in 1877 when the lease was executed; that the rate specified in the new lease of twenty-five cents per ton is a ruinous and fraudulent rate and a fair royalty world be seventy-five cents per ton, and an offer by one Robert M. Cherrie was attached to the said bill offering to pay such royalty.

11th. It is charged that the Hematite Company was only chartered to exist for the space of six years from the 9th day of August, 1877, and therefore could not accept a lease running for the period of eighteen years.

12th. That the Iron Company under its charter could only exist for eighteen years after the expiration of the existing lease, and that the execution of the lease for that space of time was an attempt on the part of St. Clair Bros. to render the stock of the Iron Company valueless and non-income paying for the full life of the company.

13th. That the books, records and papers of the company have been removed by the St. Clair Bros. to a bank at Ishpeming owned by them.

15th. That the stock of the Iron Company is fully paid, and the authority given to the Board of Directors

to make assessments is illegal.

14th. That all the proceedings of the St. Clair Bros. from the time of the purchase of the controlling interest in the said stock up to and including the meeting, constituted a fraudulent conspiracy whereby they hoped to reap all the benefit to be derived from the ownership of said mine.

Attached to the bill are,

1st. A certified copy of the articles of association of the Winthrop Iron Company.

2d. A copy of the lease from the Winthrop Iron Company to St. Clair Bros.

3d. A certified copy of the articles of association of the Winthrop Hematite Company.

4th. The assignment of the lease by the St. Clair Bros. to the Winthrop Hematite Company.

5th. A copy of the proceedings of the meeting of October 1st, 1881.

This bill was filed by Arthur B. Meeker, William L. Brown and T. B. Brooks, stockholders in the Winthrop Iron Company against that company, the Winthrop Hematite Company and the St. Clair Bros. on behalf of themselves and all other stockholders who might come in, etc., praying,

1st. That the proceedings of the meeting of October 1st, 1881, be decreed fraudulent, null and void.

2d. That the St. Clairs might be removed from office as directors of the Iron Company.

3d. That the Iron Company, its directors, officers and servants might be enjoined from proceeding with work on the deep shaft, and from paying out money therefor, and from making any assessment on the stock for the purpose of raising funds therefor.

4th. That the Iron Company, its officers, etc., be restrained and enjoined from executing the new lease to the Winthrop Hematite Company.

5th. That until the final hearing a temporary injunction should be issued.

6th. That a receiver might be appointed to take charge of the property, with the usual powers of receivers in such cases.

7th. For general relief.

The answer of the defendants—

1st. Admits the organization of the Iron Company as stated in the bill.

2d. Denies that on the 1st day of October, 1881, the estate of A. D. Reed owned the stock mentioned in the bill but admits that it did own it on and up to the 12th day of September preceding.

3d. Admits that prior to September 7th, 1881, A. C. Reed held stock in the company, and that the ownership of the balance of said stock was substantially as stated in the bill, and that A. C. Reed was the president, and J. M. Chapman was the secretary of the company as alleged.

4th. Admits that the St. Clair Bros. had been in partnership and took the lease from the Iron Company as partners, but that since 1877 the partnership had not existed, although the brothers had been engaged together in various enterprises.

5th. Admits that the Hematite Company was organized as stated in said bill.

6th. Admits that the St. Clair Bros. owned all the stock of the Hematite Company, but denies that they own it as partners.

7th. Admits that the Hematite Company was or-

ganized to operate the Winthrop mine under the lease, and that the lease was assigned to that company.

9th. That under the lease the Hematite company has paid royalties and that dividends have, from time to time, been declared, and that no dividend was paid on July 1st, 1881.

10th. Admits that the defendant, Eugene G. St. Clair in the summer of 1881, entered into negotiations for the purchase of the stock of the Winthrop Iron Company, and did make such purchase. It avers that said negotiations were completed about the 20th day of August, 1881, but the stock was not actually delivered and paid for until the 7th day of September, when the sale was completed, and the stock still remained upon the books of the company in the name of the orignal stockholders. Admits the application to the president by Eugene G. St. Clair to call a special meeting; that a meeting was called and the notice given as stated in the bill. Admits that the parties named in the bill were the only ones present at said meeting and that the record of the meeting attached to the bill is accurate. Alleges that the resignations of the directors named therein were presented, read and accepted, and after that the vacancies were filled. It denies conspiracy or fraud on the part of St. Clair Bros. It avers that the arrangement for the new lease was intended to benefit the stock. It denies that fifty cents per ton royalty was a fair rate when the lease was made in 1877. It avers that twenty-five cents per ton is a fair and liberal rate at the present time.

11th. Admits that the Hematite Company was organized for six years, but alleges that its life has, since the filing of the bill herein, been extended under the provisions of law to thirty years.

12th. Admits that the Iron Company had only

eighteen years existence from the expiration of the first lease, but denies that the lease to the Hematite Company for said eighteen years was an attempt to render the stock of the Iron Company valueless.

13th. Admits the change of offices from Chicago to Ishpeming.

14th. Denies that the stock of the Iron Company is fully paid, and denies that the resolutions to assess the stock was invalid.

15th. Denies all allegations of fraud.

16th. Admits that, in accordance with the resolution passed at the meeting of October 1st, work has been done upon the shaft. Avers that the lease authorized at said meeting was executed after the filing of the bill.

17th. Again denies all conspiracy to injure the value of the stock.

18th. Avers that sinking the shaft was a necessity for profitably working the mine.

19th. Avers that by the sinking of said shaft the product of the mine would be largely increased and the Iron company's dividends largely enhanced.

20th. Avers that the royalty of twenty-five cents per ton specified in the new lease is reasonable and liberal.

21st. Avers that said lease is a just one for the Iron company and will increase instead of decreasing the amount of dividends and the value of the stock.

22d. Avers that during the existence of the first lease it was unprofitable to the lessees.

At the time the bill was filed, the new lease had not been executed and there was therefore no prayer in the bill that it be decreed void. The prayer was that the St. Clairs should be removed from office as directors; that

the defendants should be enjoined from proceeding with work on the shaft and from paying out money therefor, and from making any assessment on the stock and from executing a new lease, and that a receiver should be appointed, and for general relief.

There is no clause in the decree declaring the proceedings of the meeting of October 1st, 1881 void, neither does the decree remove either of the St. Clairs from office as directors nor enjoin them from sinking the deep shaft, or expending money therefor, or from assessing the stock. These are matters that have not yet been passed upon, and are still unsettled.

The decree contains six clauses.

1st. The lease dated Nov. 30th, 1881, executed by the Winthrop Iron Company to the Hematite Company, after the filing of the bill, is declared null and void.

2nd. A receiver is appointed for the Winthrop Company.

3rd. The Winthrop Company, the Hematite Company and the St. Clairs are directed to surrender to the receiver all the property of the Winthrop Company.

4th. The receiver is directed to continue the business of the Winthrop Iron Company, *and to lease or operate its mine until the further order of the court.* He is directed to keep full and accurate account of his acts and doings as receiver, and to report the same from time to time to the court as may be directed, and he is given leave to apply to the court from time to time for such further order and direction as may be necessary.

5th. The St. Clair Bros. and the Hematite Company are to account as trustees of the Winthrop Iron Company for a reasonable royalty upon the ore mined by them since December 1st, 1882, and a reference is made to the

Master to take and state an account,

(a)—Of the royalty due from them under the old lease and concerning the rights and obligations of the lessor and lessee under that lease, which terminated by virtue of its own provisions on December 1st, 1882.

(b)—Of the royalty to be charged on ore mined after the expiration of the old lease.

(c)—Of the property of the Winthrop Company on hand or that ought to have been on hand on November the 30th, 1881, or that has been used and expended by the lessees since that date in the business, with the dates and amounts of expenditures, and the purposes for which expenditures were made, and to what extent such expenditures are or may be of value to the Winthrop Iron Company, and also to what extent such expenditures are or may be of value to the Hematite Company or to the St. Clair Bros.; and also of the compensation to be allowed the complainants for counsel fees and expenses.

The Master is to be at liberty to make special report from time to time, but is to make his general report concerning these matters with all convenient speed.

6th. The Court reserves to itself such further direction *as may be necessary to carry the decree into effect*, concerning costs; or as may be equitable and just.

The return of the Circuit Judge to the alternative writ and the motion to dismiss the appeal proceed upon the theory that this decree is interlocutory, and not final, within the meaning of the act of Congress.

In granting the appeal which had been denied by the Circuit Judge, Mr. Justice Matthews frankly and freely expressed his conviction that the decree was final.

Deference to that opinion led Counsel for Appellees to carefully examine all the reported decisions of this

Court bearing upon the question.

A review of the cases so thoroughly satisfied us of the the interlocutory character of this decree, that we have at some length collated the authorities, and we present them for the patient consideration of the Court with confidence that they will sustain our position.

Under other circumstances, we should content ourselves with citing the cases. Our departure from the ordinary rule, we hope and believe is fully justified by the fact we have stated.

In the case of the Palmyra 10th Wheaton, page 502, the libel was dismissed, but after the decree of restitution there had been a reference to commissioners to ascertain the amount of damages, and before the report of the commissioners had been acted upon by the court an appeal had been taken.

Chief Justice Marshall says: "The Court has had the "question submitted in this cause under consideration, "and is of opinion that the appeal is not well taken. "The decree of the Circuit Court was not final in the "sense of the Act of Congress. The damages remained "undisposed of, and an appeal may still lie upon that "part of the decree awarding damages. The whole cause "is not, therefore, finally determined in the Circuit Court; "and we are of opinion that the cause cannot be divided, "so as to bring up successively distinct parts of it.

The case in 3rd Cranch. 179, is essentially different. "In that case, which was an appeal in an equity cause, "there was a decree of foreclosure and sale of the mort-"gaged property. The sale could only be ordered after "an account taken, or the sum due on the mortgage ascer-"tained in some other way; and the usual decree is that, "unless the defendant shall pay that sum in a given time,

"the estate shall be sold. The decree of sale, therefore, "is in such a case final upon the rights of the parties "in controversy, and leaves ministerial duties only to be "performed."

In Young vs. Smith, 15th Peters, 287, Mr. Justice "Storey says: "We are of opinion that the decree is an "interlocutory and not a final decree, in the sense of the "Act of Congress. It is plain that it does not dispose of "the whole matter in controversy between the parties. "And if an appeal could now lie upon the decree already "rendered, an appeal could also lie from time to time. "from any future decree of distribution of any assets "which may be collected after the former decree, *toties* "*quoties* without any final decision being made of all the "matters in controversy. In our judgment this would "be against the clear import and intention of the Acts of "Congress; which were designed to give an appeal only "from a decree final upon the whole matters and merits "of the controversy."

The next case passed upon by the Court is that of Forgay vs. Conrad, 6th Howard, 201, and is the case upon which appellants will chiefly rely. The decree in this case was held to be such a final decree as would be appealable and in that case the deed, under which defendants claimed title, was not only set aside, but the decree directed the property in dispute to be delivered *to the complainant, and awarded execution.* Chief Justice Taney at page 204 lays down the rule thus:

"And when the decree decides the right to the pro- "perty in contest, *and directs it to be delivered up by the* "*defendant to the complainant*, or directs it to be sold, "or directs the defendant to pay a certain sum of money "to the complainant, and the complainant is entitled to "have such decree carried immediately into execution,

"the decree must be regarded as a final one to that ex-
"tent, and authorizes an appeal to this Court, although
"so much of the bill is retained in the Circuit Court as
"is necessary for the purpose of adjusting, by a further
"decree, the accounts between the parties pursuant to
"the decree passed.

"This rule, of course, does not extend to cases where
"money is directed to be paid into Court *or property to*
"*be delivered to a receiver* or property held in trust to
"be delivered to a new trustee appointed by the Court,
"or to cases of a like description. Orders of that kind
"are frequently and necessarily made in the progress of
"a cause. But they are interlocutory only and intended
"to preserve the subject matter from waste or dilapida-
"tion and to keep it within the control of the Court un-
"til the rights of the parties concerned can be adjudi-
"cated by a final decree."

Perkins *vs.* Fourniquet, 6th Howard, 206, is the next case in the volume. The Circuit Court decreed that the complainants were entitled to two-sevenths of certain property and referred the matter to a Master in Chancery to take and report an account prescribing fully and with precision the principles upon and manner in which the account should be taken, and reserving all other matters until the coming in of the report. The Chief Justice, at page 208, says:

"This clearly is not a final decree in any respect. It is
"the common and ordinary interlocutory order or decree
"passed by Courts of Chancery in cases of this kind, and is
"absolutely necessary to prepare the case for a final hearing
"and final decree, wherever the complainant is entitled to a
"partition of property or an account. For the principles up-
"on which an account is to be stated by the Master, or a
"partition made, cannot be prescribed by the Court until it
"first determine the rights of the parties by an interlocutory
"order or decree; and the case cannot proceed to final hear-

"ing without it. And the appellant is not injured by deny-
"ing him an appeal at this stage of the proceedings, Be-
"cause these interlocutory orders and decrees remain under
"the control of the Circuit Court, and subject to their revis-
"ion, until the Master's report comes in and is finally acted
"upon by the Court, and the whole of the matters in contro-
"versy between the parties disposed of by final decree.
"And upon an appeal from that decree, every matter in
"dispute will be open to the parties in this Court, and
"may all be heard and decided at the same time."

This case came before the Court again in 16th Howard, 82, and it was held that when the cause had been referred to the Master and afterwards came before the court upon exceptions to the master's report, the court had a right to change its opinion from that which it had expressed in the interlocutory order and to dismiss the bill. That all previous interlocutory orders were open for revision.

In Pulliam vs. Christian, 6th Howard, page 209, the decree of the Circuit Court set aside a deed made by a a bankrupt before his bankruptcy and directedthe trustees under the deed to deliver over to the assignee in bankruptcy all the property remaining undisposed of in their hands, but without deciding how far the trustees might be liable to the assignee for the sums received for the proceeds of the property which may have been paid over to the creditors. An account was also ordered to be taken of the same and the decree was held to be not a final decree.

Mr. Justice McLean, at 212, says:

"This decree is final only as to the trust deed. All
"the matters arising under the trust are referred to a
"commissioner for a statement of the account to enable
"the Court to enter a final decree. There is no sale or

"change of the property ordered which can operate in-
"juriously to the parties. Under such circumstances,
"the decree not being final as to the whole matter in con-
"troversy, the appeal must be dismissed."

In Craighead vs. Wilson, 18th Howard 199, the case was referred to a master to state an account between plaintiffs and defendants and to ascertain what property remained in the hands of the ~~Master,~~ latter and how much had been sold, with the prices, to make allowance to the defendants for payments made or incumbrances discharged and to ascertain what might be due from defendants to plaintiffs.

Mr. Justice McLean cites, with approval, Perkins vs Fourniquet, and Pulliam vs. Christian, supra, and says, at page 201:

"The above cases are sufficient to show the grounds
"on which appeals in Chancery are dismissed. To au-
"thorize an appeal the decree must be final on all matters
"within the pleadings, so that an affirmance of the de-
"cree will end the suit. To apply this test in all cases
"cannot be difficult.

"In no legal sense of the term is the decree now be-
"fore us a final one. The basis of the decree, embracing
"the equities of the bill, is found, but the distribution
"among the parties in interest depends upon the facts to be
"reported by the master. It is his duty, under the inter-
"locutory decree, to balance the equities by ascertaining
"what has been expended upon the property, and what has
"been received by each of the claimants; and also every
"other matter which should have a bearing and influence
"in the distribution of the property. Until the court
"shall have acted upon this report and sanctioned it,
"giving to each of the devi-ees his share of the estate under
"the will, the decree is not final.

"There may be cases in which the attention of the Court "has not been drawn to the character of the decree appealed "from; but such an inadvertence cannot constitute an excep- "tion to the rule. The decision of the Court, under the law, "establishes the rule which must govern in appeals from the "Circuit Court.

"The case of Whiting *vs.* Bank of the United States, 13 "Peters, 6, is supposed to conflict with the above rule; but "that was a decree of foreclosure and sale of the mortgaged "premises. This was held to be a final decree, the order for "sale having an effect similar to that of an execution on a "judgment.

"The case of Michaud et al *vs.* Girod et al, 4 Howard, "503, was an interlocutory decree in the Circuit Court, and "which case, being appealed, was heard and decided by this "Court. But, from the report, there appears to have been "no exception taken to the appeal, and it may be presumed "to have escaped the notice of the Court.

"The case of Forgay et al *vs.* Conrad, 6th Howard, 201, "was an appeal from an interlocutory decree, which was sus- "tained, though objected to. But this decision was made "under the peculiar circumstances of that case. The decree "was, that certain deeds should be set aside as fraudulent and "void; that certain lands and slaves should be delivered up "to the complainant; that one of the defendants should pay "a certain sum of money to the complainants; that the com- "plainants should have execution for these several matters; "that the Master should take an account of the profits of the "lands and slaves, and also an account of certain money and "notes, and then said decree concluded as follows, viz.: "'That so much of said bill as contains or relates to matters "'hereby referred to the Master for a report, is retained for "'further decree in the premises,' etc.

"It will be observed that two deeds for lots in New "Orleans were declared to be null and void, and certain "slaves owned by Forgay, one of the appellants, were di- "rected to be sold on execution, as also the real estate, and

"the proceeds distributed among the bankrupt's creditors; "and if the defendants principally interested could not take "an appeal until the return of the Master, their property, "under the decree, would have been disposed of beyond the "reach of the Appellate Court, so that an appeal would be "useless. This was the principal ground on which the "appeal was sustained, although it was stated that this part "of the decree was final.

"The Court says: 'The decree upon these matters "'might and ought to have awaited the Master's report; "'and when the accounts were before the Court, then every "'matter in dispute might have been adjudicated in one "'final decree; and if either party thought himself ag- "'grieved, the whole matter could be brought here and "'decided in one appeal, and the object and policy of the "'Acts of Congress upon this subject carried into effect.'

"The decree before us is not final, consequently it must "be dismissed."

In Beebe *vs.* Russell, 19th Howard, 283, the appeal was dismissed. The bill prayed that the defendants might be ordered to convey to the complainant certain pieces of property, which it was alleged were fraudulently withheld from him, and account for the rents and profits. The Circuit Court decreed that the defendants should execute certain conveyances and surrender possession, and then proceeded to refer the matter to a Master to take an account of the rents and profits received, or which could and ought to have been received by the defendants or any of them for any part of said premises, etc.

Mr. Justice Wayne, in a careful review of the authorities, lays down the rule thus:

"When a decree finally decides and disposes of the "whole merits of the cause, and reserves no further questions "or directions for the future judgment of the Court, *so that* "*it will not be necessary to bring the cause again before the* "*Court for its final decision*, it is a final decree. It is true a

"decree may be final, although it directs a reference to a "Master, if all the consequential directions depending upon "the result of the Master's report are contained in the "decree, so that no further decree of the Court will be nec- "essary, upon the confirmation of the report, to give the par- "ties the entire and full benefit of the previous decision of "the Court."

Referring to the order of reference in that case, the same Judge says that further action of the Court in the nature of a decree would be necessary to give the defendant in error the benefits of "the rents and profits received by the defendants "in the Court below, or which could or ought to have been "received by them or any of them for any part of the prem- "ises."

That the Court's direction to the Master as to how the accounts of rents and profits should be taken involve rights in the respective parties and a pecuniary uncertainty in respect to the sum to be paid by the defendant, which are only to be made certain and operative by the same Court upon the Master's report; that it left a sum to be ascertained with precision by the Master from the elements from which he was directed to make up the account, but not those merely consequential from the previous directions of the decree, and he proceeds at page 286:

"But the reference of a case to a Master, to take an ac- "count upon evidence, and from the examination of the par- "ties, and to make or not to make allowances affecting the "rights of the parties, and to report his results to the Court, "is not a final decree; because his report is subject to excep- "tions from either side, which must be brought to the notice "of the Court before it can be available. It can only be "made so by the Courts over ruling the exceptions, or by an "order confirming the report, with a final decree for its ap- "propriation and payment. We have just said the decree is "final when ministerial duties are only to be done to ascer- "tain a sum due. The case of Ray *vs.* Law, 3 Cranch, 179, is

"an instance. It was there ruled by this court that a decree "for a sale under a mortgage is such a final decree as may be "appealed from. Afterwards, when that case was cited in "the case of the Palmyra, (10 Wheaton, 502), Marshall, Chief "Justice, said for the Court: 'In that case, which was an "'appeal in an equity cause, there was a decree of fore-"'closure and sale of the mortgaged property. The sale "'could only be ordered after an account taken, or the sum "'due on the mortgage ascertained in some other way. "'And the usual decree is, that unless the defendant shall "'pay that sum in a given time, the estate shall be sold. "'The decree of sale, therefore, is in such a case final upon "'the rights of parties in controversy, and leaves ministerial "'duties only to be performed.' In such a case, the direction "is but a consequence of the decree, and no further decree is "necessary. * * * It has been supposed that this "Court did not apply its present interpretation of the laws "regulating appeal in the cases of Whiting *vs.* Bank of the "United States, (13 Peters, 6), of Michaud *vs.* Girod, (4 "Howard, 503), and in Forgay *vs.* Conrad, (6 Howard, 201). "It is, however, not so. Whiting's case, in that part of it "relating to appeals, was only what this Court had said in "Ray *vs.* Law before cited, that a decree of foreclosure and "sale is final upon the merits of the controversy, and an "appeal lies therefrom. In Michaud *vs* Girod no such point "was made in the argument of it, nor touched upon in the "opinion of the Court. In Forgay's case, it was made upon "the decree given by the Court below, and it was adjudged "by this Court to be final, to give this court jurisdiction of "it. But it was so, upon the ground that the whole merits "of the controversy between the parties had been determined, "*that execution had been awarded*, and that the case had been "referred to the Master merely for the purpose of adjusting "the accounts. The fact is, the *order of the Court in that "case for referring it to a Master was peculiar*, making it "doubtful if it could in any way control or qualify the ante-"cedent decree of the Court upon the whole merits of the

"controversy, or modify it in any way, except upon a petition "for a re-hearing. We refer to the case, however, with confi- "dence, to show that the reasoning of the opinion is caution- "ary upon the subject of bringing appeals, and confirmatory "of what we have said in this case. We dismiss the case, the "Court not having jurisdiction of the appeal."

In Humiston *vs.* Stainthrop, 2 Wallace, 106, a decree awarding a patentee a permanent injunction and for an account of gains and profits, and that the cause be referred to a Master to take and state the account and report to the Court, was held not to be a final decree. The same kind of decree had previously been held interlocutory in Barnard *vs.* Gibson, 7th Howard, 650.

Thomson *vs.* Dean, 7th Wallace, 342, is not in conflict with these authorities. The controversy related to the ownership and transfer of 204 shares of stock of the Memphis Gaslight Company and the rights of the parties under contracts relating to the purchase, sale and transfer of the stock. The decree directed the defendant to transfer to one of the complainants 194 shares, and 10 shares to another. It also directed an account to be taken as to the amount paid and to be paid for the stock, and as to dividends accrued and to be credited under the contracts between the parties. In the language of the Chief Justice, the decree decided the right to the property in contest and directed it to be delivered by defendant to complainant by transferring title, the defendant to have the decree carried immediately into execution, leaving only to be adjusted the amount between the parties in pursuance of the decree settling the question of ownership.

In Railroad Company *vs.* Swasey, 23d Wallace, 405, it was held that even a decree of foreclosure and sale is not final so long as the amount due upon the deed must be ascertained and the property to be sold ascertained and defined. At page 410 the Chief Justice says:

"A reference to a Master to ascertain and report the "facts is not sufficient. A Master's report settles no rights.

"Its office is to present the case to the Court in such a man-
"ner that intelligent action may be there had, and it is this
"action by the Court, not the report, that finally determines
"the rights of the parties."

The last case which seems to have been passed upon by the Court is Grant *vs.* Phœnix Insurance Company, 106 U. S., 429. The Chief Justice delivered the opinion of the Court, as follows:

"The rule is well settled that a decree to be final, within
"the meaning of that term as used in the Acts of Congress
"giving this Court jurisdiction on appeal, must terminate the
"litigation of the parties on the merits of the case, so that if
"there should be an affirmance here the Court below would
"have nothing to do but to execute the decree it had already
"rendered. This subject was considered at the present term
"in Bostwick *vs.* Brinkerhoff, ante p. 3, where a large num-
"ber of cases are cited. It has also been many times decided
"that a decree of sale in a foreclosure suit, which settles all
"the rights of the parties and leaves nothing to be done but
"to make the sale and pay out the proceeds, is a final decree
"for the purposes of an appeal. Ray *vs.* Law, 3 Cranch, 179;
"Whiting *vs.* Bank of the United States, 13 Peter, 6; Bron-
"son *vs.* Railroad Company, 2 Black, 524; Green *vs.* Fisk,
"103, U. S. 518. But in Railroad Company *vs.* Swasey, 23
"Wallace, 405, it was held that 'to justify such a sale, with-
"'out consent, the amount due upon the debt must be deter-
"'mined. * * * Until this is done the rights of
"'the parties are not all settled. Final process for the col-
"'lection of money cannot issue until the amount to be paid
"'or collected by the process, if not paid, has been adjudged.'
"In this the Court but followed the principle acted on in
"Barnard *vs.* Gibson, 7 Howard, 650; Crawford *vs.* Points, 13
"id. 11; Humiston *vs.* Stainthorp, 2 Wallace, 106; and many
"other cases.

"The present decree is not final, according to this rule.
"It does not order a sale of the property. It overrules the

"defense of the appellant, as set forth in his cross bill, and "declares that the appellee is the holder and owner of the "debt secured by the deeds of trust, but refers the case to an "auditor to ascertain the amount due upon the debt, the "amount due certain judgment and lien creditors, the exist- "ence and priorities of liens, and the claims for taxes. It is "true that the Court finds the amount due the appellee largely "exceeds the value of the property, but this is only as a foun- "dation for the order appointing the Receiver. If, in point "of fact, it is not true, the finding will not conclude the par- "ties in the final closing up of the suit. The order for the "delivery of the property is only in aid of the foreclosure "proceedings, and to subject the income, pending the suit, to "the payment of any sum that may in the end be found to be "due. If anything remains, either of the income, or of the "proceeds of the sale, after the mortgage or trust debts are "satisfied, it will go to the appellant, notwithstanding what "has been decreed. There is no order as in Forgay *vs.* Con- "rad, 6 Howard, 201; Thomson *vs* Dean, 7 Wallace, 342, and "other cases of a like character, adjudging the property to "belong absolutely to the appellee, and ordering immediate "delivery of possession. In Forgay *vs.* Conrad, supra, which "is a leading case on this question, it was expressly said by Mr. "Chief Justice Taney (p. 204) that the rule did not extend to "cases where property was directed to be delivered to a re- "ceiver. The reason is that the possession of the Receiver is "that of the Court, and he holds, pending the suit, for the "benefit of whomsoever it shall in the end be found to con- "cern. Neither the title nor the rights of the parties are "changed by his possession. He acts as the representative of "the Court in keeping the property so that it may be sub- "jected to any decree that shall finally be rendered against it."

In the light of these decisions is not the decree in this case clearly interlocutory? The only thing that can be said to be finally settled by the decree is the provision in the first clause adjudging the new lease executed after the filing of the

bill to be void, and in the language of Mr. Justice McLean in Pulliam *vs.* Christian, "All the matters arising under the "trust deed are referred to a Master for a statement of account "to enable the Court to enter a final decree."

It is not impossible that when the report comes in the Court may change its opinion and hold the lease valid, or it may hold the proceedings of October 1st, 1881, to have been valid and regular, and to authorize the execution of another lease omitting some of the objectionable features of this one.

The Master's report of the matters referred to in clause (c) may show such a state of affairs that the Court may conclude that a new lease may be so advantageous in its operation that it should be executed. It cannot be said "that an affirmance "of the decree will end the suit," and that is the rule laid down as has been seen in Craighead *vs.* Wilson, 18th Howard, 199. The language of the Court in that case is precisely applicable here:

"In no legal sense of the term is the decree now before "us a final one. The basis of the decree, embracing the equi- "ties in the bill, is found, but the distribution among the "parties in interest depends upon the facts to be reported by "the Master. It is his duty, under the interlocutory decree, "to balance the equities by ascertaining what has been ex- "pended on the property," etc.

The clause annulling the new lease cannot therefore give the stamp of finality to this decree. It merely furnishes the basis of the interlocutory decree. It does not finally settle the whole case. It does not dispose of the whole matter in controversy between the parties. "It is the common and or- "dinary interlocutory order or decree passed by Courts of "Chancery in cases of this kind, and is absolutely necessary "to prepare the case for a final hearing and final decree, wher- "ever the complainant is entitled to a partition of property "or an account. For the principles upon which an account is "to be stated by the Master, or a partition made cannot be "prescribed by the Court until it first determine the rights

"of the parties by an interlocutory order or decree; and the "case cannot proceed to final hearing without it." (Perkins *vs.* Fourniquet, supra.)

Without further repetition it is insisted that in no sense of the term, as defined by the authorities, is this decree final. There is no clause except the first that is urged as giving a final character to the decree. All the others are of a purely interlocutory character.

If further demonstration be needed, it is furnished by that clause in the decree which appoints a Receiver to take charge of the business "until the further order of Court;" that is, until such time as an accounting shall have been had and the rights of all parties definitely ascertained, so that the property can be turned over by the Receiver to the company, with the matters involved in this litigation forever settled.

Does not this clause, with the direction given the Receiver to report to the Court from time to time, and the leave to apply for further orders, clearly show the interlocutory nature of the decree? In the case of Forgay *vs.* Conrad, which is understood to be the case most relied on by the defendants, the Chief Justice expressly says that a decree would not be final where it directed property to be delivered to a Receiver, and his language in that particular, as has been seen, lately received the approval of the Court in Grant *vs.* the Phœnix Insurance Company. From the very nature of things a decree appointing a Receiver must be interlocutory. The appointment of a Receiver cannot be permanent. It is merely temporary. The Court, through its Receiver, takes possession of the property to hold until the rights of all parties are settled by the final decree, and on the final decree the property must either be turned over to some of the parties or be sold. It is only until the final disposition of the property can be determined that the Court holds possession of it through its Receiver, who takes charge of the same. And in this case there was a necessity for the appointment of such a Receiver. At the expiration of the old lease on December

1st, 1882, the Winthrop Iron Company, by virtue of the provisions of that lease, must have purchased the property and fixtures owned by the Hematite Company. This property was worth from $30,000.00 to $40,000.00. If the parties could not agree upon the value, resort was to be had to arbitration. The St. Clair Bros. being officers of both corporations, doubt lsss there would be little trouble in agreeing upon the price that they as officers of the lessors should pay to themselves as the officers of the lessees for these improvements, and so there would be no necessity for this arbitration. Their larger interest was with the Hematite Company, as they owned its entire stock, and their endeavor would have been to obtain the largest price. Being so much interested for the seller, the Court could not allow them to also represent the purchaser. If for no other purpose, therefore, it was not only proper, but necessary, that a Receiver should be appointed who should take care of the interests of the iron company in the purchase of the improvements, and this was so whether the new lease was held valid or not, for the purchase of the personal property was to be made by virtue of the provisions of the old lease, and had no connection with the new, except that when so purchased the property was to go to the lessee under the new lease as a part of the demised property.

The interlocutory nature of the decree is also shown by the direction to the Master to report as to the expenditures made by the lessees, and to what extent they would benefit the lessors. It is evident that all questions relating to the parties upon whom the Court should finally impose the expense of this deep shaft, costing $50,000.00, were to be reserved until the coming in of the Master's report, and until the Court was advised by that report as to the party most benefited by that expenditure. Then there is in this decree the reservation by the Court of the right to make such further directions as should be necessary to carry the decree into effect, or as might be equitable and just.

In some of the cases cited considerable stress is laid upon such a reservation of authority.

It is therefore insisted that the decree entered in this case is interlocutory and not final; that the rule requiring the Hon. John Baxter, Circuit Judge, to show cause why an appeal should not be allowed, should be vacated, and that the appeal granted by Mr. Justice Matthews, sitting as Circuit Judge, should be dismissed.

We append the opinion of the Court below, taken from 17 Federal Reporter 48.

BAXTER, J. The defendants, the Winthrop Iron Company and the Winthrop Hematite Company, are corporations organized under the laws of Michigan. The capital stock of the former consists of an iron ore mine rated at $500,000. In August, 1877, it made a lease thereof to the St. Clair Brothers, a partnership composed of the four defendants by that named sued herein. Soon after securing said lease they organized the Winthrop Hematite Company, for the purpose of working the mine thereunder. They continued thus to operate it until the summer of 1881, when they made an effort to obtain a renewal thereof to the Winthrop Hematite Company. But failing to secure it they proceeded to purchase a majority of the capital stock of the Winthrop Iron Company, and assume control of their business. At their instance a stockholders' meeting was called for Oct. 1881. The meeting was accordingly held by one of the St. Clairs (who acted for himself and brothers), assisted by W. S. Hollert, their attorney and one G. B. Breese. Neither Hollert nor Breese owned any stock in the company. Hollert was made president and Breese secretary of the meeting. Being thus organized they adopted certain resolutions, in which, among other things, they removed two directors of the company, and appointed three of the St. Clairs in their stead; authorized the sinking of a shaft at the mine, and appropriated $50,000 of the company's money to complete and equip it; authorized and directed a lease of the company's mine for 18 years from and after December 1, 1882,—the time at which the former lease was to expire,—to the Winthrop Hematite Company, and soon thereafter Eugene G. St. Clair as president, and J. N. St. Clair as secretary, of the Winthrop Iron Company; and Eugene G. St. Clair as secretary, and George A. St. Clair as superintendent, of the Winthrop Hematite Company, professing to act for and in behalf of their respective companies, entered into contract wherein and whereby it was agreed that said first company should lease its mine,

with all the improvements, machinery, etc., thereon, for 18 years to the Winthrop Hematite Company at a royalty of 25 cents per ton.

The relief sought by complainants, who sue as well for all other stockholders in the Winthrop Iron Company as for themselves, is a rescission of said lease and an account of rents and profits; and to this end they have, through their solicitors, invoked that well-established principle so uniformly enforced by courts of equity, which forbids agents from dealing with themselves or with other persons for their private benefit, to the detriment of their principals. Is the principle applicable to the facts of this case?

The lease sought to be rescinded is not to the St. Clairs, but to the Winthrop Hematite Company. But who is the Winthrop Hematite Company? A mere entity created by law, without body or soul, endowed with capacity to acquire, hold, and dispose of property in trust for the use and benefit of the natural persons of whom it is composed, in proportion to their several interests therein. But its property belongs in equity to the corporators, and every contract that wrongfully deprives the corporation of any part thereof, or diminishes its value in an injury to its beneficial owners. Hence courts of equity look beyond the artificial creature in whom the legal title is vested, to the real persons which it represents. The defendants St. Clair were, at the time the lease was executed, and are yet, the owners of all the capital stock of the Winthrop Hematite Company. If any profits or other advantage resulted therefrom it inured to them, to the same extent as if the lease had been made directly to them. Hence, in executing said lease from the Winthrop Iron Company to the Winthrop Hematite Company, they were, in a beneficial sense, dealing with themselves; and we can see no reason for withholding the application of the principle invoked and herein before stated, unless its application is averted by the stockholders' resolution hitherto mentioned, and under and by authority of which, as it is alleged, the lease was executed.

Does this resolution validate and make effectual a contract that would otherwise be declared void?

The ownership of a majority of the capital stock of a corporation invests the holders thereof with many and valuable incidental rights. They may legally control the company's business, prescribe its general policy, make themselves its agents, and take reasonable compensation for their services. But, in thus assuming the control, they also take upon themselves the correlative duty of diligence and good faith. They cannot lawfully manipulate the company's business in their own interests to the injury of other corporators. Any contract made by them in behalf of their principal with themselves or with another for their personal gain would be voidable at the option of the company. We may, therefore, admit that the stockholders' meeting of October, 1881, was legally called

and regularly convened, (facts, however, denied by the complainants;) that it possessed the power to displace two of the existing directors and electing three of defendants in their stead; to direct a lease of the company's mine, and dictate the company's general policy within the scope of its chartered privileges; and yet defendants would be without the legal right to appropriate the corporate property to themselves or to make any other disposition of it for their private benefit. If they could, they would be, in effect, the beneficial owners of the entire corporate property. If they can make such a lease, they can, as selfishness or caprice shall dictate, modify its terms, expend the company's entire income in improvements to facilitate their individual interests, or do anything else their selfishness or cupidity may suggest. The law does not thus vest majority stockholders with any such dangerous power, invite such peculations, or open the door to such abuses. If a majority of stockholders can, in any event and under any circumstances, thus vote away the corporate property to their individual uses,—a question that need not be decided in this case,—they could only do so upon the clearest and most satisfactory evidence of good faith, and for an adequate consideration; and the burden of proof is upon the parties thus acting and claiming the enforcement of such a contract. All doubts in relation to adequacy of consideration and good faith ought to be resolved in favor of the principal. Was the lease in question, therefore, fairly obtained, and is it supported by a just and adequate consideration?

On these points the testimony is not susceptible of easy reconciliation. It consists mainly of the opinions of professed experts and interested witnesses; the witnesses for complainants generally concurring in the opinion that the royalty contracted for in the second lease is grossly inadequate; while those for defendants unite in the opinion that the rent agreed on is a sufficient consideration for the leased premises. Each witness endeavors to fortify his opinion with such extraneous facts as seemed to him to be material and pertinent to the issue. But fortunately the Court is not entirely without other evidence bearing on these questions. It appears that the defendants St. Clair are experienced and successful business men. In 1877, with a full knowledge of its condition, resources and capabilities, they applied for and obtained a five years' lease of said mine, and therein agreed to pay a royalty of 50 cents per ton. By it they obtained nothing but a lease of the mine. The lessor was under no obligation to make any improvements or furnish machinery. These facilities were to be provided by the lessees, the lessor covenanting to purchase the same upon the expiration of the lease, at such price as might, in case of a disagreement between the parties, be fixed by arbitration. This contract sufficiently evinces defendant's estimation of the mine

at that time. Nothing has since been developed in connection therewith calling for any radical change of opinion in this regard; and yet, after more than three years of actual experience in working the mine under that lease, the defendants, for the purpose of securing another lease of the same property, resorted to the means hereinbefore detailed to obtain it: and, after having thus secured absolute control of the corporation to which it belonged, by their votes as stockholders, authorized and directed themselves, as the officers and agents of the company, to make and execute a lease of said premises to another and distinct corporation, wholly owned by them and for their exclusive benefit, at one-half the royalty contracted for in the first lease, provided a sufficient quantity of ore could be found accessible without an unreasonable outlay of money.

It seems that a reduction of one-half the royalty agreed to be paid under the first lease ought to have been accepted as a sufficient concession. But it did not satisfy the defendants. They demanded more, and being, as they supposed, in full possession of the requisite power, they dealt in a most generous spirit with themselves. The second lease, conforming to the requirements of the resolution passed by their votes, included, in addition to the mine, from $30,000 to $40,000 worth of machinery (which the lessor company was, under the terms of the first lease, bound to purchase) and the $50,000 of money appropriated for the purpose of sinking and equipping a shaft to put the mine in a more workable condition to facilitate their operations. Interest on these two sums, ordinary deterioration of the machinery, the $3,000 salary allowed to one of the defendants for acting as president of a corporation stripped of its property and left without any active business or responsibility, will about absorb all the rent payable under said second lease. Its effect, therefore, is to transfer the beneficial interests of all the company's property to defendants for 18 years. But if, perchance, it does not do this, another stockholders' meeting, to be called and controlled by defendants, can easily find some pretext for appropriating any surplus that may remain. A lease thus attained, and capable of being perverted to such injustice, ought not to be sustained. It is inequitable, and a fraud upon the rights of the other stockholders. A decree will, therefore, be entered, declaring it fraudulent, and ordering its rescission, and appointing a receiver to take charge of and superintend the company's business, until the accounts hereinafter ordered and the rights of the parties involved herein are ascertained and finally adjusted. The defendant St. Clair will also be required to account with the Winthrop Iron Company, pursuant to the terms of the first lease, until December 1, 1882, the date of its expiration, and from and after that time for the actual profits realized by them from said mine, or for a reasonable royalty, at complainant's election. Said defendants

will also be decreed to pay the costs heretofore accrued. And as the complainants have prosecuted this case for the common benefit of all the parties interested, to protect and preserve a trust fund, they are entitled to be reimbursed therefrom for all proper expenditures made or liabilities necessarily incurred in and about the prosecution of the same. A Master will therefore be appointed to hear proof, and take and report in reference to the accounts hereinbefore ordered, and to ascertain what will be a proper allowance to complainants for their counsel fees and other necessary expenditures made or to be made by them in and about the prosecution of this suit.

All other questions will be reserved until the coming in of the Master's report.

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